S. HRG. 100-992

OVERSIGHT OF DEPARTMENT OF DEFENSE ETHICS PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT

OF THE

COMMITTEE ON GOVERNMENTAL
AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

SEPTEMBER 29, 1988

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
92-448 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-79

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OVERSIGHT OF DEPARTMENT OF DEFENSE ETHICS PROGRAMS

THURSDAY, SEPTEMBER 29, 1988

U.S. Senate,
Subcommittee on Oversight
of Government Management,
Committee on Governmental Affairs,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Stevens, Cohen, and Heinz.

Staff present: Linda J. Gustitus, Staff Director and Chief Counsel; Mary Berry Gerwin, Minority Staff Director and Chief Counsel to the Minority; Frankie de Vergie, Chief Clerk; and Paulina Collins, Intern.

OPENING STATEMENT OF SENATOR LEVIN

Senator Levin. The Subcommittee will come to order.

The hearing this afternoon relates to the question of the oversight and operation of the ethics program inside the Department of Defense.

In 1987, the Inspector General of the Department of Defense made the following excellent statement: "The integrity of the Department of Defense employees, particularly in the procurement community, is the single most important factor in preventing and detecting fraud, waste and abuse in Defense operations and programs. As such, an effective ethics program is critical to ensuring the integrity of Defense personnel and programs."

That statement puts into context the focus of today's hearing, the DOD ethics program. We will look at the extent to which the current DOD ethics program is effective, where it may be weak, and how best to improve it. It is particularly important that we review DOD's ethics program at a time when allegations of the largest procurement fraud scandal in recent memory have caused many of us to question whether the DOD's ethics system is doing the job.

It has added significance in light of DOD's recent push for DOD contractors to establish their own self governance and ethical programs. Common sense and conventional wisdom dictate that ethical conduct is largely dependent upon the tone set and the attention paid to ethics by top management. Ethical conduct must be a matter of first importance in personnel management, not an after thought or a disregarded formality. Ethical conduct by Federal and contractor employees is the foundation for public confidence and for competent program performance, and that requires management attention and commitment to the standards of conduct.

Within the Department of Defense each of the three services has its own ethics office and its own ethics program, as does the Office of the Secretary of Defense [OSD]. In addition to its responsibility for overseeing compliance with the standards of conduct for the 5,000 or so employees in OSD, the OSD ethics office serves as the overseer to the ethics programs of the services as well.

While one would expect the Office of the Secretary of Defense to have an exemplary ethics program that could serve as a model for the rest of the DOD, unfortunately this appears not to be the case. Some of the worst problems identified in recent reports by OGE and the Department of Defense Inspector General were in the Office of the Secretary of Defense. Most of today's hearing will focus on the work of that office.

The Subcommittee staff has reviewed a number of audit reports prepared by the DOD Inspector General and the Office of Government Ethics on the DOD ethics program. Those reports, together with discussions the Subcommittee staff have had with DOD ethics officials at the Office of the Secretary of Defense and in the services indicate a broad range of problems in the operation of that program. Some of these problems have continued for years without action by the OSD despite recommendations by the Office of Government Ethics and the Department of Defense Inspector General for action.

Here is a partial list of the serious deficiencies. First, a lack of training and education. Despite a recommendation by the Department of Defense Inspector General in February of 1987 that the Office of the Secretary of Defense develop a special training program for procurement personnel, and despite inclusion of a promise to that effect in the May 1987 DOD guidelines, the Department of Defense Inspector General has determined that, "No such educational program has been developed."

Moreover, despite requirements and restrictions on both incoming and exiting DOD personnel, particularly in the area of procurement, we have been told that the OSD ethics office is not kept informed of new and departing employees. This lack of communication makes adequate education and guidance to these people virtually impossible.

In addition, the Office of the Secretary of Defense does not have a regular ongoing ethics training program for current employees, despite a recommendation that goes way back to 1983 by the Office of Government Ethics that a training package be developed.

Next, the Department of Defense continues to maintain exceptions to the prohibition on gratuities despite recommendations by both the Office of Government Ethics and the Department of Defense Inspector General that such exceptions be eliminated.

Next, only the Air Force has established a formal Gratuities Board to address violations of 10 USC 2207 where the Department of Defense may obtain 3 to 10 times the amount of damages resulting from the payment of a gratuity to obtain a contract or a favorable settlement.

Next, the Department of Defense guidelines continue to exclude rulemaking from the definition of "particular matter" for the purposes of the 1-year post-employment lobbying ban and the conflict-of-interest statute despite the Office of Government Ethics objection and the Justice Department's agreement with the Office of Government Ethics. Practically speaking, that means that Department of Defense employees are allowed to engage in conduct which for other Federal employees would be criminal.

In addition, when the Office of Government Ethics reviewed the financial disclosure forms filed with the Office of the Secretary of Defense in October of 1987, the results were disturbing. A list of the high-level employees required to file was 2 years old. In other words, it was out of date. In addition, out of the 694 names on the list, as many as 126 of the reports were missing.

Despite the OGE's request, the Office of the Secretary of Defense made no commitment to collect the missing reports, and we will be asking the General Counsel this afternoon if the system for collecting the financial disclosure forms has been improved.

Our witnesses today include the authors of the audit reports that I have mentioned, as well as the Department of Defense Designated Agency Ethics Official and General Counsel, Kathleen Buck, and we look forward to their testimony and we are grateful for their arranging their schedule to get here today.

Senator Bill Cohen of Maine is our Ranking Republican and as always we are delighted to call upon him.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you, Mr. Chairman. I will not take the time to duplicate much of what you said. I think you have covered the issues that we intend to explore and that need exploration.

I might say that given the size of the Office of the Secretary of Defense—we are talking somewhere in the neighborhood of 5,000 military and civilian employees—the management tasks assigned to just trying to monitor people coming in and leaving is indeed a formidable one. But it has always struck me as somewhat ironic that we have the technology to monitor the movement of SS–20s deep in the heart of the Soviet Union but we somehow have not developed the technology, or utilized it, to monitor the movement of people in and out of the Government with any degree of regularity or accuracy.

On this Subcommittee, you and I have had an opportunity to talk about subjects such as computer matching. We are very good at matching up records of individuals that we want to make sure are not taking advantage of Government programs. I think we should be equally willing to use technology to match up, perhaps, employees who move in and out of the Department of Defense. And this is, I believe in the interest of the Department of Defense itself.

We, frankly, are not going to be in a position to support the kind of expenditures that we have recently authorized, that is, in the neighborhood of $300 billion, as long as there are allegations of wrongdoing, of improper use of insider information, of Ivan Boesky types of abuses taking place within the Pentagon, because the easiest thing will be for many members to start slashing the Defense budget. So there is obligation on the part of all of us to make sure that the money that is appropriated is spent responsibly and consistent with our laws.

I know the Department has revised its own standards of conduct, and I want to commend the Department for doing that. This was done consistent with some of the changes that have been adopted by this Congress or, at least, I would say Congress since 1980, 1981 or 1982. There have been some needed revisions and the Department of Defense is to be commended for it. What we want to do is see whether it is enough, whether those directives are in fact being implemented, and whether there is adequate oversight conducted to determine that they are being implemented.

So I commend you for calling the hearings and look forward to the testimony of the witnessses.

Senator **Levin**. Thank you, Senator Cohen. Again, we are particularly glad for your involvement, as always, because of your staunch record in the area of ethics and the fight to make sure that we live up to high ethical standards in Government.

I call upon Senator Heinz. Do you have an opening statement, Senator?

Senator **Heinz**. Mr. Chairman, thank you.

Senator **Levin**. Your timing was absolutely perfect, by the way.

OPENING STATEMENT OF SENATOR HEINZ

Senator **Heinz**. I would like to just say a couple of words. First, I commend you for holding these hearings. I think they are quite timely. Of course, the subject of ethics in the Department of Defense is an issue that has been raised, you might say, in bold type this year, and we have all been shocked and dismayed by this year's revelations of the extensive fraud and conflict of interest in Defense procurement.

And part of the scandal in that case is the apparent inability of the existing legal framework at the Defense Department to hold employees and contractors and consultants accountable. And the subject, therefore, of this hearing is even more disturbing because what we are really talking about here is an examination of the failure to implement safeguards already in the law, or the failure to implement clear recommendations from qualified experts on ways to clean up the system.

Now, we have all been around here for awhile and we know that Congress can have and often does have a short attention span and when the problem occurs we tend to jump up and down and all over the problem for several days. But this Subcommittee is an exception to that rule, and I want to commend the Chairman and the Ranking Member—Senator Levin and Senator Cohen—for the diligence in following up on what has become an issue that has dropped from both the radar screens and the television screens and which represents a serious problem in Government management, one that has not gone away on its own accord.

I do not think this Subcommittee can do everything that is required. We cannot do it all. We do rely on the Executive Branch to enforce the laws we enact and to implement the recommendations of expert panels and Government watchdog offices with respect to those laws which are paid for by the taxpayers' money. And when it comes to enforcement of laws of conflict of interest and personal ethics, the record in the Defense Department is hardly encouraging.

I think every single one of us on this Committee and elsewhere up here believes that the defense of this Nation is a serious matter and the enforcement of rules on ethics must be treated equally seriously, and the overwhelming number of people involved in Defense procurement are undoubtedly honorable, patriotic, ethical individuals. But even these individuals are subject to pressures that can lead to distortions of process and jeopardize the national interest.

I am reminded that in 1985 the DOD Inspector General urged the Department to revise its standards of conduct to make clear when its employees must recuse themselves from procurement decisions. In addition, the IG made it clear that the failure of the General Counsel at DOD to provide written advice to senior officials has made it impossible to prosecute cases where that advice is disregarded. And since that time the IG and the Office of Government Ethics have repeatedly recommended improvements in those standards of conduct and in financial disclosure and in the training of employees, and had those recommendations been more closely followed, it is entirely possible that we might have avoided the outrageous abuse of procurement policy which we have seen.

So it is vital that the laws and regulations that we have constructed to prevent improper behavior be strictly enforced and be well administered.

Mr. Chairman, it goes without saying that we want those rules already on the books enforced, but I suspect we must do more. I certainly do, speaking for myself, support Senator Pryor's amendment on the registration of Department of Defense consultants. I think we have to rein in a segment of the Defense procurement community which has too often succumbed to temptations and pressures of improper methods. So while we are asking here today for better enforcement of existing rules, I think we also have to remind ourselves that much more remains to be done in laying the legislative basis for a clear and reliable procurement system.

Mr. Chairman, I commend you and Senator Cohen again. Thank you.

Senator COHEN. Could I add just one footnote? Just so we do not lose perspective on this, we are not singling out the Department of Defense. As a matter of fact, the Office of Government Ethics will indicate, I believe, that DOD has been, perhaps, most responsive in trying to implement the rules and regulations that have been imposed. So, if there are deficiencies within DOD, we have got serious problems elsewhere and what we are trying to do is not to single out the Department of Defense but rather to find out the nature of the problems that have been encountered, given the size and scope of the Office of the Secretary of Defense.

So I think we have to place it in that perspective. This is not an attempt on our part to single out DOD for its deficiencies or failures, but rather to find out if we are doing enough and what, if anything, ought to be done to enhance that oversight and compliance.

Thank you, Mr. Chairman.

Senator **Levin**. Senator Stevens, do you have an opening statement?

Senator **Stevens**. I have no statement, Mr. Chairman. I was just sitting here thinking about some of the papers I have recently written on ethics. I do not know if you have seen them, but it seems to me that we ought to keep in mind that we have about as much chance of preventing wrongdoing in the area of ethics as we have in preventing people from using steroids in the Olympics. The question is whether the system is sufficient to provide a means of detection and enough exposure to make enforcement of a code of conduct enough of a deterrent to future events.

I would like to thank you for holding the hearings. I think it is a good idea to pursue these, but I hope we do not get to the point where we think we can prevent people in any branch of the Government from doing what their counterparts are doing in the stock market in New York or on the athletic field or anywhere else. Human beings are human beings.

I appreciate the chance to be with you.

Senator **Levin**. Thank you Senator Stevens, Senator Heinz and Senator Cohen, all of you.

Our first witness is Derek Vander Schaaf, who is the Deputy Inspector General of the Department of Defense, and he is accompanied by Howard Cox, who is the Deputy Assistant Inspector General for Criminal Investigations Policy of the Department of Defense.

Mr. Vander Schaaf, if you would summarize your statement we would appreciate it, and we welcome you.

TESTIMONY OF DEREK J. VANDER SCHAAF, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY HOWARD W. COX, DEPUTY ASSISTANT INSPECTOR GENERAL FOR CRIMINAL INVESTIGATIONS POLICY [1]

Mr. **Vander Schaaf**. Good afternoon, Senator Levin, and thank you very much. My statement was put together in rather a hurried fashion. We did not have the usual time to do the kind of statement that we like to do. We consider testifying and preparing statements for Congress to be an important part of our dual reporting role; our role to report to Congress and our role, of course, to report to the Secretary of Defense on these matters.

I was not sure how broad or how narrow a scope you wanted. I have tried to broaden the scope of this statement to cover a good deal of the standards of conduct and ethics issues that are prevalent within the Department and the regulations that flow therefrom.

Senator Cohen, I appreciate your remarks. I wanted to convey the same tone in my statement, a sense of balance regarding issues of ethical conduct. You should not get the idea that fraud or ethics violations are running rampant in the Department of Defense and that everyone in the Department is engaged in such behavior. Yes, we have a few employees who get out of line. We go after those employees regularly and to the best of our ability. They are properly disciplined or punished in various ways. So there is that effort there. Even so, the vast majority of our employees are not involved in these kinds of activities, and it is important that we keep that in perspective.

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[1] See p. 50 for Mr. Vander Schaaf's prepared statement.

In the same way we must maintain the proper perspective with respect to the administration and management of the DOD Standards of Conduct program. There are some shortfalls in that program which I am going to discuss with you this afternoon. However, I don't want you to get the idea that I believe that the Department's program is no good at all. It has a lot of good features and a lot of effort goes into it. I wanted to make this point up front.

Senator COHEN. To stay with Senator Stevens' analogy, or to speak metaphorically, most people in DOD and contractors and consultants are not going for the gold; is that right?

Mr. VANDER SCHAAF. That is right.

Senator COHEN. All right.

Mr. VANDER SCHAAF. Not even the bronze, sir.

Senator COHEN. Good.

Mr. VANDER SCHAAF. Let me try to briefly summarize my statement by walking you through the principal points. I have divided my statement into four major parts. The first part deals with the underlying laws. We believe the laws underlying this area are basically sound. They are a bit complex. You may be able to simplify them to some extent. I doubt, however, that you could make a lot of progress in attempting to simplify them.

We believe that, with a good training program, there is no reason to presume that Government officials should not fully observe those laws and regulations. They are not so difficult that our personnel cannot become familiar with them and conduct themselves accordingly.

As I note in the second part of my statement, however, we cannot expect people to conduct themselves in accordance with the laws if we do not spend some effort in training them and informing them as to what we expect in terms of their behavior. We have emphasized again, as part of the fallout from the recent revelations of the "Ill Wind" investigation, that perhaps we ought to do more in the Department of Defense in terms of mandatory ethics training.

Some portions of the Department have good, mandatory ethics training programs. Others are more questionable. We also think there should be more uniformity in those programs, particularly in ethics training efforts for procurement personnel. There are specific laws and rules for them because of their vulnerability to violations and temptations which I think are stronger in that area of our business than in any other. So here, again, we probably should do some things to further strengthen the training program.

We want to undertake a program of briefing key officials in the Department, and we have attempted to encourage Department of Defense service schools to include ethics and standards of conduct training in their curriculum. We have not been particularly successful in that area. Of the schools that we contacted—we contacted 26—18 of the schools said they already cover this; however, they did not provide us with any details as to what degree they covered it or how accurate and comprehensive that coverage was. So, again, we would like to see more done in that regard. Service schools are a perfect place to do more of this training.

We have also done a lot of work to try to educate people. I have some of the publications that the IG has put out. This first one, the one that has probably received the most publicity around town, is "How to Keep Out of Trouble." It was done with the Office of Government Ethics. I also have "Indicators of Fraud." I will not go through all of these now, but we try to make these publications available to the Department to use regularly as part of their training programs and to alert them to the pitfalls in this business.

The key role that we play, of course, is in enforcement. We cannot have an effective ethics program without having an effective enforcement program. We constantly face the problem, Mr. Chairman, on the amount of resources we devote to our enforcement of ethics programs, as opposed to using our resources to audit major acquisition programs, for example. This is not an easy decision to make. Nevertheless, we do follow up and attempt to bring to a conclusion all allegations of misconduct that we receive when they seem to have at least some substantiation to them.

On page 10 of my statement I list those kinds of things that we do follow up on: Using inside information, gifts to subordinates, soliciting employment with DOD contractors, abuse of authority of office, accepting gratuities, participating in outside employment that is incompatible with Government duties, using Government resources for unofficial purposes, especially to benefit yourself or your family, failing to report certain financial interests, and matters of that kind.

We literally have done hundreds of these cases through our Special Inquiries Office. For the most part, these cases are never made public. They are sent to the proper administration and management officials to take necessary disciplinary action, and, in most cases, we believe we do get appropriate disciplinary action.

As Senator Levin also mentioned, we have done a number of audits and other types of reviews involving financial disclosure statements and post-employment reporting within the Department. The General Accounting Office has hit this post-employment reporting issue very heavily. My statement discusses this on pages 14, 15 and 16. I have also testified on numerous occasions on revolving door legislation. The Office of the Inspector General has always encouraged Congress to strengthen that legislation and toughen it up.

We think that the current legislation is reasonable and appropriate. However, we need some time to see if it works. It went into effect in April 1987. We just have not had an opportunity to bring any cases to fruition under that new legislation. There are a number of cases under investigation right now which could lead to prosecution under the new standards.

One of the things I want to point out is that there is a bill in the House side—H.R. 4956—that would amend Title 10 with respect to the revolving door problem. This bill would do away with the civil and administrative remedies that are in the current legislation, and I strongly recommend to you that, if that bill does get to the Senate side, you do not do away with the civil and administrative remedies. Historically, we have found that conflict of interest and revolving door matters are best handled from a civil or administrative standpoint.

United States Attorneys seem very reluctant to undertake these cases as criminal matters in Federal courts and, therefore, we ask you that, if that legislation does get to the Senate that you make sure it continues to include civil penalties as well as criminal penalties.

One of the reports we have done, and I think it is the one that you want to address most this morning, is a report entitled "Gratuities and Standards of Conduct Relating to DOD Procurement." It was issued February 23, 1987, and provided our assessment of some of the weaknesses in the Standards of Conduct program within the Department of Defense as they applied to procurement personnel. I will not mention that report any further, since I am sure you will have a lot of questions about it.

There are some changes that can be made to the ethics program. For example, one that we stress highly is the need for more documentation of the decisions that ethics officers make in response to requests for their opinions. We believe that those opinions should be better documented; they should flow from the lower echelons in the Department of Defense up to higher echelons with some sort of management review of those opinions. We can obtain greater uniformity. We can enforce ethics officials' opinions. We are also more likely to win cases in which individuals did not follow the opinion of the ethics official and conducted themselves outside of the rules.

I think that I will end my remarks here, except to mention one additional point. There is a new Standards of Conduct directive out. It has been out since May of 1987. We think it is an effective Standards of Conduct directive although we believe there are a few points that need some tightening up. Our particular report on "Gratuities and Standards of Conduct for Procurement Personnel" came out prior to the issuance of the Standards of Conduct directive.

We pushed fairly hard for a number of years to get the Department to issue a new Standards of Conduct directive because the previous one was issued in 1977. The previous directive did not include any of the Ethics in Government Act provisions that were passed by the Congress and signed into law in 1978. We were in the 1987 to 1986 time frame, without having updated our Standards of Conduct directive, and we felt that it was important to issue the new directive as quickly as possible.

We had differences with the General Counsel's office over incorporating some of the recommendations from this study into the new directive. We were unable to push all of those through. However, we did not non-concur with the new directive. At that point, I felt it was more important to get a revised directive out to DOD personnel and to the defense agencies and the military departments than it was to bicker over the remaining details.

Now, I am sure, Senator Levin, you are going to say these are not mere details, and you are right, Senator. They are not details in a sense.

Senator Levin. You just took away my first question.

Mr. VANDER SCHAAF. We can go back over some of those recommendations and review their impact as we proceed with the hearing.

There is one other area I did discuss in my statement, but I am not sure you are interested. I was concerned that you might be interested in it, so I took up the matter of DOD Advisory Committees and the Federal Advisory Committee Act. There is a section at the back of my statement dealing with those matters, but I do not intend to address it here.

I will now conclude my remarks and try to answer your questions.

Senator LEVIN. Thank you very much, Mr. Vander Schaaf. The first question that I have relates to a letter which you wrote to Senator Roth on July 29 of this year in which you noted in effect that almost none of the recommendations which were made in your 1987 report have been implemented in the new DOD Standards of Conduct.

You went through those recommendations and analyzed them and noted that the standards still permit procurement personnel to receive gratuities, that there is no standards of conduct training program developed for procurement personnel, that there is no system for coordinating individual and contractual matters in gratuities cases, and there is still little, if any, coordination of activities among DOD components.

Why do you think that so few of the recommendations which you had previously made to the DOD have been implemented?

Mr. VANDER SCHAAF. Well, they have been addressed but they have not been fully implemented. I think that is a more accurate way to say it. They have addressed the issue of gratuities, for example. Maybe we ought to take these one at a time.

Senator LEVIN. Well, why don't we take the educational program. You said that to date no educational program has been developed.

Mr. VANDER SCHAAF. I believe that is basically right. There are educational programs in the Department but there is not a central educational program designed to assist procurement personnel in their duties, and we think that that is a shortcoming.

Senator LEVIN. Why do you think they have not done that?

Mr. VANDER SCHAAF. There are probably a number of reasons. You know, the lack of staff could be one of the reasons. But recently they have added additional staff in the General Counsel's office, and I think she should speak to that matter, whether she is appropriately and properly staffed to conduct and manage this program.

We would like to see additional management into the program. There is no doubt about it, and that is the tenor of those recommendations there. I would like to see a relationship from the General Counsel's office to the other ethics officials in the Department similar to the IG's office and our relationship to the audit activities in the Department.

You know, we review the other audit activities in the Department on almost a daily basis and we are constantly reviewing their reports. We are constantly looking at how well they are training their personnel, et cetera. We would like to see more of that kind of activity, no doubt about it. It becomes, I think, a matter of do they have the resources and the time to carry that out.

Senator LEVIN. Do you know whether or not the Secretary of Defense has been prevailed upon to do what is necessary to carry out your recommendation? Has your office, if it is budget time, if it is a staff problem, said, look, we have got a real problem here. I mean, we have got standards of conduct which are not being enforced. We are not training our people in them in the procurement field. It is a very fundamental and basic thing.

Has that pitch been made at budget time if that is the problem?

Mr. VANDER SCHAAF. I am not sure if that pitch has been made at budget time It is not that we are not training our people at all.

Senator LEVIN. But your statement is that a specifically tailored standards of conduct training program should be developed for procurement personnel.

Mr. VANDER SCHAAF. A specifically tailored one; that is correct.

Senator LEVIN. Okay. That is your recommendation.

Mr. VANDER SCHAAF. Yes.

Senator LEVIN. It has not been followed. Now, I asked why and you say, maybe it is a budget matter, or you are not sure. But my question is——

Mr. VANDER SCHAAF. Howard may know. Howard has been tracking this very closely for the past 2 or 3 years.

Senator LEVIN. Is it a matter of staff?

Mr. COX. Part of it, sir, is that to date when we provide ethics training to DOD employees—say, for example, when an individual comes on active duty in the Army, he gets basic standards of conduct training when he is a Second Lieutenant at the Officers Basic School. Twenty years later when he is going to be the program director for the new Army tank, it is unlikely he has gotten any specific ethics guidance outside of what he first got as an Army officer many years before.

What our recommendation would be is that there are special rules now that apply just to procurement people; we need special training in the context of his procurement training that will emphasize the special rules in the procurement context.

Senator LEVIN. And that has been your recommendation for quite awhile. Why hasn't it been implemented? What are the impediments of such a basic item?

Mr. COX. It is a matter of management emphasis. Our office has been actively involved in attempting to fill some of the gap. We teach, for example, at the ALMC, the Army Logistics Management Center, a special course on ethics for senior level procurement officials. So we have been trying to fill as much of the gap as we can.

Senator LEVIN. My question is muc more specific. You have made a recommendation here to have a specifically tailored standards of conduct training program for procurement personnel. It has not been implemented.

My question is, do you know why?

Mr. COX. I believe, sir, that the Department feels that the current program of providing general ethics guidance is adquate and that they do not——

Senator LEVIN. They disagreed with your recommendation?

Mr. COX. Yes, sir.

Senator LEVIN. Okay. The next item that you mentioned in that letter, you wanted to be specific, Mr. Vander Schaaf, so let's be specific: "Ethics officials should be encouraged to issue written reports for both post-employment and conflict of interest situations," and in your testimony you told us why you have made that recommendation.

We have had specific cases that I think have been either lost in court or challenged in court because of vagueness over what the opinions were which were received. They were oral opinions, allegedly, with nothing in writing. The Army has done this pretty well, as I understand it. The Army, as I gather, comes closest to following this recommendation, but the Office of the Secretary of Defense apparently rarely follows it, and they always use a loophole which is in there.

Why is this? Why haven't they followed your recommendation that ethics officials should be encouraged to issue written reports? For the reason you gave, might we not lose cases in the absence of written reports?

Mr. VANDER SCHAAF. It is probably time consuming and hard work, but it is important. We think that they should write those cases out.

Senator LEVIN. Is that the reason they gave you? It is too hard?

Mr. VANDER SCHAAF. I guess the reason is indicated the words that are used in the directive which say "when practicable." Then you get into the issue of when it is practicable and when it isn't. I am sure the ethics official receives a lot of phone calls. I am sure it is much simpler to answer with a phone call.

Senator LEVIN. But the Army does well in this area. The Army does well.

Mr. VANDER SCHAAF. I believe they do a little better, but I am not particularly sure. We have never audited in this area. In other words, we have never looked at how many phone calls and how many questions or how many letters were written to ethics officials in the Department, how many were then answered in writing as opposed to how many were answered orally or not answered at all, that kind of a test. We have never had the time to make that kind of a detailed audit.

Senator LEVIN. Your letter says that, while most DOD components have followed that lead—which is using the practicable as a reason not to do it—you said that the Army's implementing regulation comes closest to following your recommendation.

My question is, why doesn't the rest of the DOD follow the lead of the Army?

Mr. VANDER SCHAAF. Because the Standards of Conduct directive doesn't require them to follow the lead of the Army.

Senator LEVIN. But you have recommended it.

Why don't they follow your recommendation when you press them for their answers? You are the Deputy IG. When the IG's office says to the OSD, look the Army can do it; their regulation implementing it does it; why don't you adopt the same position as the Army? What do they tell you? It is too tough, too difficult to do?

Mr. VANDER SCHAAF. I think the answer we received the last time was that it was rarely practicable to do it. It takes too much time, and they do not have the resource to do it. I think that is the simple answer.

Howard, do you want to comment?

Mr. Cox. It is basically, sir, a question of resources. There are a limited number of ethics counselors and a great number of options that would be requested and required to be memorialized in this way. In my opinion, sir, from what we have seen it is a question of resources.

Senator LEVIN. So that the Army has more resources than the rest of the Department of Defense?

Mr. Cox. The Army has—at least under the current version of their regulation—has been willing to commit a greater number of resources to this area.

Mr. VANDER SCHAAF. Frankly, I am not sure, Senator, that it is such a difficult problem to write these down. I do not think all the questions are unique. It would seem to me that it would be to our advantage—to the ethics people's advantage—to have a large number of these pre-written opinions. They could then be checked for applicability and uniformity. Using modern word processing equipment, opinions could be put into writing for people fairly easily.

So, I think you have to talk to them.

Senator LEVIN. And they have a great educational advantage because you can then share the advice with other people and, let me add—it is an important thing—you also then are not going to find people who, when they are taken to court or whatever, or are being held up to a standard in an administrative proceeding say, "Oh, no, that is now what I was told; I was told something else," because there would be a written record of what they were told.

Mr. VANDER SCHAAF. Exactly. You constantly have the problem now where the individuals say, "Well, I told the ethics officer about this." The ethics officer says, "Well, you did not tell me quite that, you told me something else." So we are not sure what was said between the two parties.

Senator LEVIN. My time is up. Senator Cohen?

Senator COHEN. Mr. Vander Schaaf, is the phrase "whenever practicable," void for vagueness?

Mr. VANDER SCHAAF. Yes, sir.

Senator COHEN. I mean, should we just strike that from your recommendations?

Mr. VANDER SCHAAF. Well, I would like to see a term that would be a little tighter than "whenever practicable."

Senator COHEN. I do not understand who defines what is practicable. You leave it up to the individual service to say it is not practical or practicable here because we do not have the resources. We are purchasing an M-1 tank and we are not dealing with ethics this year. We have got higher priorities.

So you leave it up to the individual service to start defining what is practicable and you could just wipe it out saying it is simply not practicable.

Mr. VANDER SCHAAF. The new revolving door legislation, Title 10, 2397b, requires written opinions on ethical questions involving revolving door matters. We are conforming in these matters. So, if the Congress wants written opinions, you ought to legislate that. That may be the only way you will get it. I don't know.

Senator COHEN. Based on your response to Senator Levin, do you think it is not only desirable, but that it is necessary?

Mr. VANDER SCHAAF. We think it is more necessary than current practices would indicate. I am not saying it is necessary to issue a written opinion on every single question regarding an ethics matter, but certainly we need to do better than we do now.

Senator COHEN. My next question: if we were to delegate this to you and ask why you don't just amend your recommendations to eliminate those words, you would say that you would probably get the same response you got to the previous one.

Mr. VANDER SCHAAF. Yes.

Senator COHEN. So you are telling us then that we should legislate in this particular area if you want to have any compliance with it.

Mr. VANDER SCHAAF. You should encourage the Department to change its opinion. I think you ought to listen to Ms. Buck and her staff on that matter as well.

Senator COHEN. How could we encourage them without legislating? Why should we have any more impact than you have had?

Mr. VANDER SCHAAF. I think that the United States Senate may have a little more impact than we have. You have control of a few resources and there are a few other levers that you can pull, I am sure.

Senator COHEN. But it is only advisory——

Mr. VANDER SCHAAF. It would be advisory, there is no doubt about it. I have seen many letters coming from Senators and members of Congress that I felt were right on the money. I have sometimes felt the Secretary of Defense should have accepted their recommendations and he, or his staff, has sometimes seen otherwise.

We don't try to challenge those issues. We are not trying to run the Department. We are trying to do the fact finding and report things as we see them.

Senator COHEN. Okay. One of the things you indicate in your testimony is that there does not seem to be any sense of uniformity in the ethics guidance that is provided within various branches. The Air Force might have something different from the Navy, the Navy different from the Army; is that right?

Mr. VANDER SCHAAF. There has been some lack of uniformity. I think there have been some cases. Howard, do you want to discuss a couple of particular cases?

Senator COHEN. Well, is there a lack of uniformity? I think you indicated that.

Mr. COX. Yes, sir. A typical example would be if a contractor is dealing with an Army representative, a Navy representative and an Air Force representative, one he could give coffee and donuts to, another he couldn't. Each would have a different gratuities policy based on his command. There is no uniformity for the contractors to know what is right and what is wrong.

Senator COHEN. There has been a raging debate over the years—Senator Goldwater is no longer with us here in body but he is with us in spirit—of trying to get greater uniformity in procurement of aircraft, of various types of military equipment, and there has always been a reasonable degree of debate on that. The Air Force needs something quite different from the Navy, and on and on.

Is there any justification in your judgment as to why there should be a difference in the uniformity of ethical standards procedures or practices between the services when their contracting officers deal with the private sector?

Mr. Cox. I would suggest no, sir, and in some instances the current directive addresses that. For example, Congress 2 years ago suggested a limitation on things that were handed out at ship launching ceremonies. The DOD Standards of Conduct directive properly then extended that to aircraft roll-outs for the Air Force and tank roll-outs for the army, which supports that principle, that in these areas uniformity is the appropriate approach to take.

Senator COHEN. Do we have to mandate that legislatively?

Mr. VANDER SCHAAF. No, I don't think so. One good note that I can report is that the Office of General Counsel has particularly specified in the new Standards of Conduct regulation that they must pre-approve all the new service and Defense Agency Standards of Conduct regulations as those are issued.

Now, this process has taken a little longer than expected. The services have not issued revised Standards of Conduct regulations yet, even though the DOD regulation was issue in May of 1987. But at least they are reviewing them for uniformity and I think that is good.

Senator COHEN. Have some of the recommendations that go back to your February 17, 1987 recommendations that Senator Levin was asking about been implemented? Specifically, the establishment of an absolute bar in the acceptance of gratuities from contractors for DOD procurement organizations?

Mr. VANDER SCHAAF. No. We made our case with the people. There are some arguments for not establishing an absolute bar. An absolute bar is a tough case, on balance. And I have wrestled with this, myself, Senator. I testified that probably the easiest way to avoid all of these problems is an absolute bar. However, when people break the absolute bar, let's be compassionate and understanding with respect to the circumstances under which it was broken.

If it was a cup of coffee and a donut, that is one thing. If it was a job offer and it impacted on a contract, that is another thing. Of course, I am saying we have to enforce it, but the services feel there are a lot of circumstances where individuals get put in positions where they may have to take a gratuity or take a ride or do something. In the end, I looked at it and I said, let's just have an absolute ban. It worked at AMC, the Army Materiel Command. It has worked at the Air Force Systems Command with the "Straight Arrow" program, and on balance, I have to support the absolute ban. Then we have a real standard that we can stick with and live with.

Senator COHEN. So from an enforcement point of view it is sort of like the INF treaty: zero/zero. That way, if you allow a few out in the field you really cannot tell whether it is a violation or not and you start getting into the discretionary area. There are, I think, probably legitimate, gray areas where people are called upon to receive either a ride, a hotel, or whatever, to attend a ship launching, or whatever it might be, which could be reasonably justified.

But what you are saying is that by allowing that to take place makes the potential for abuse that much greater and that much harder to enforce.

Mr. **Vander Schaaf**. The current directive does specifically exclude certain activities and functions, or allows gratuities to be accepted up to certain limits. At least there are some guidelines and controls, Senator, and that is step one. We would have liked to have seen tougher controls but we were unsuccessful in that.

I am not complaining about it in that sense of the word. We did not come back the second or third time to challenge the new direction. When this directive was in final coordination, we did not nonconcur. We, again, said at least bring it down to $10 from $100 for a family on ship launchings. We said, it is more important to get the directive out than it is to continue to argue about some of these details.

Senator **Cohen**. What about adverse contractual action against contractors who provide gratuities? What was your recommendation there?

Mr. **Vander Schaaf**. Well, the law is very clear about contract actions which can be taken. I am not sure we made any specific recommendations. However, we did recommend coordination of administrative actions against contractors.

Mr. **Cox**. One of the things we recommended was that the statute be enforced more frequently than it had been in the past. It has been on the books for some 25 years and we could not find, at the time we were doing this study, an instance where it had been used. While the study was being done, the Navy did certainly take action against General Dynamics and other companies who have engaged in a systematic provision of gratuities to Navy officials.

Since the report has been issued, the Defense Logistics Agency just last month had their first action under the statute. So we are certainly glad that there is now an organizational awareness of the availability of this. We would like to see it used much more frequently.

Senator **Levin**. Isn't one of the reasons it has not been used more frequently, the gratuities statute, is because most of the services do not have a Gratuities Board? Wouldn't that help in the enforcement of that statute?

Mr. **Vander Schaaf**. We think that would help. I am not sure that the reason it has not been enforced is because the boards were not there. We did push hard to get a temporary board for the Navy in this particular case that Mr. Cox talks about here.

Senator **Levin**. Would it help?

Mr. **Vander Schaaf**. Yes, but there has been some unwillingness. The thought is that is is all right for Admiral or Captain or Colonel so and so to participate in these kinds of functions or go to lunch with the organization with which he is doing business. It has not always been frowned upon to the degree it is frowned upon today. For that reason, I guess, you haven't got prosecutions of these cases.

Nobody is going to prosecute. These matters are generally minor. We cannot get a United States Attorney to undertake these things, Senator Levin, when they involve only a couple hundred dollars worth of gratuities.

Senator **Levin**. Yes. That is the whole point of that statute. You do not need a U.S. Attorney to penalize a contractor 3 to 10 times for the violation, do you?

Mr. **Vander Schaaf**. No. No you wouldn't.

Senator **Levin**. That is just a contractual action; isn't that right?

Mr. Cox. That is correct, sir.

Mr. **Vander Schaaf**. That's correct.

Senator **Levin**. That is the whole point of that statute which hasn't been used. It is because we know U.S. Attorneys are not going to go to court for a $90 gratuity. But if we had a board, as you have recommended, in each of the services that might help; is that fair enough?

Mr. Cox. Yes, sir.

Mr. **Vander Schaaf**. Yes.

Senator **Levin**. With but one exception, we don't have a board in any of the services, I think.

Mr. Cox. The Air Force has formally created a board. The Navy has proceeded with an ad hoc board, and the Defense Logistics Agency has complied and created a board.

Senator **Levin**. So most of the service personnel are not covered yet. We don't have boards in the Army and we don't have boards in OSD, right? Well, Army is the main one.

Mr. Cox. That is correct, sir.

Senator **Levin**. Okay. So you have recommended it; is that right?

Mr. **Vander Schaaf**. That is right.

Senator **Levin**. And what is the response from the DOD?

Mr. **Vander Schaaf**. I can read you the response.

Senator **Levin**. Well, what is your recollection?

Mr. **Vander Schaaf**. Again, they felt that the amount of activity, was not enough to justify having a permanent board.

Senator **Levin**. The Air Force does but the OSD does not; is that what it comes down to?

Mr. **Vander Schaaf**. I would not say the OSD doesn't.

Senator **Levin**. Well, the DOD doesn't.

Mr. **Vander Schaaf**. The majority of DOD's operations do not believe boards are necessary.

Senator **Levin**. Okay. Some do and some don't. But you do?

Mr. **Vander Schaaf**. Yes.

Senator **Levin**. And you are the Inspector General, or you are the Inspector General's office?

Mr. **Vander Schaaf**. That is right.

Senator **Levin**. So I would hope that would carry a little weight with the DOD.

Mr. **Vander Schaaf**. I think it does carry a little weight. We have made some progress here.

Senator **Levin**. No. You said focus on specific points, so now let's focus. On this point, it hasn't had much weight?

Mr. **Vander Schaaf**. It hasn't had a whole lot.

Senator **Levin**. All right.

Mr. **Vander Schaaf**. We have made some progress, Senator.

Senator **Cohen**. Would a letter from Senator Levin make a difference?

Mr. **Vander Schaaf**. I doubt it.

Senator **Levin**. And if it were signed by Senator Cohen, would it really make a difference?

Mr. **Vander Schaaf**. I doubt it. [Laughter.]

Senator **Levin**. How about if we both signed it. I think we ought to test that. I think you have given us a challenge. Let's just send that letter and see if it does make a difference.

Senator **Cohen**. It probably will not make a difference.

Senator **Levin**. Well, let's see if it makes a difference. We will support the IG on this, send a letter and see what the response is.

You said in your 1987 report—just one more question on the gratuities—that in many instances DOD employees actually encouraged the provision of gratuities and in some cases such efforts amount to virtual extortion.

Those are the words of the IG. Those are pretty strong words.

Mr. **Vander Schaaf**. We had one case that involved what I will call a golfing club. Certain contractors were expected to chip in to provide for the green fees and the food and so forth, for very high level officials in the Department. I was very unhappy about that situation and it has since been corrected.

Senator **Levin**. What happened?

Mr. **Vander Schaaf**. Not a whole lot. We investigated it criminally. That probably was a mistake on our part for spending that much time using criminal investigators on it. Maybe we should have used some of our administrative and general investigative people instead. The Secretary of the Air Force was made aware of the problem and rectified the situation in terms of stopping the activity. I do not think any disciplinary action was taken against any individual. However, I am not fully aware of that. There might have been some limited counseling given to some high ranking officers, but other than that, I am not sure there was any disciplinary action.

Senator **Levin**. You know, these sound like little things—they really do—asking contractors to pay green fees at a golf course. It sounds like a little thing. It is $20 or $30 or whatever it is. But it really is a very large thing in terms of attitude. And I think that is what we are all talking about here, because that gets reflected in lots of other ways that are much bigger than $20 or $30.

Senator Cohen?

Senator **Cohen**. I might point out that that applies to the Congressional Branch as well, if we look at what Political Action Committees are contributing to candidates who serve on various committees. I think we have to take a look at ourselves as well in terms of what the significance of that is.

Senator **Levin**. I couldn't agree with you more. I think we ought to get rid of the whole way we finance Congressional campaigns and get to public financing, get rid of political action committees, get rid of honorariums. I couldn't agree with you more.

That is a different hearing, one that we are always happy to hold.

Mr. **Vander Schaaf**. One that I am not going to comment on.

Senator **Levin**. But it is a point well taken.

Do you have any other questions?

Senator **Cohen**. No.

Senator LEVIN. Thank you both.

Our next witness is Gary Davis, who is the Chief Counsel of the Office of Government Ethics, and Mr. Davis is accompanied, I believe, by Edward Pratt, who is the Management Analyst, Monitoring and Compliance Division of the Office of Government Ethics.

We welcome you, Mr. Davis and Mr. Pratt.

TESTIMONY OF F. GARY DAVIS, CHIEF COUNSEL, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY EDWARD PRATT, MANAGEMENT ANALYST, MONITORING AND COMPLIANCE DIVISION

Mr. DAVIS. Thank you, Senator.

Senator, as you know, we do not have a written statement. I would like to extend to you the regrets of Judge Nebeker for not being here this afternoon. He just was unable to return.

Not having a written statement, I do think it is appropriate, however, to characterize and comment on the Office of Government Ethics' working relationship with the Department of Defense. And I would like to do that, if I may, Senator.

I think it is important to emphasize that the Office of Government Ethics has always maintained a very positive, constructive, and continuous dialogue with the Department of Defense on ethics-related matters. Our latest review on defense-related activities occured in the February-March 1987 time frame. This included the Office of the Secretary of Defense. That particular review is the second OGE review of DOD ethics programs. We had previously reviewed their programs in 1983.

In addition, we have reviewed the ethics programs of the three military services during 1986, and much of the information that we gleaned from those reviews impacted upon the review that we conducted at the Office of the Secretary. And I might add that this was particularly true of our review of the DOD directive 5500.7, which was published in final form in June of 1987.

Specifically, we view the transfer of the designated agency ethics official function from the Deputy Assistant Secretary Administration, Washington Headquarters Services, to the General Counsel's office as a very positive systemic move on the part of DOD. I think this was particularly true since this move was implemented by the establishment within the Office of the General Counsel of a Standards of Conduct Office, with increased staffing whose primary duties are geared to ethics-related matters. Again, this was coupled with the establishment of the DOD Ethics Oversight Committee made up of service and DOD component representatives.

We are here to assist the Subcommittee, and both Mr. Pratt and myself would be happy to answer any questions that the Subcommittee may have for us. Thank you.

Senator LEVIN. Thank you very much, Mr. Davis.

Like the DOD IG's office, the Office of Government Ethics made a number of recommendations to the Department of Defense concerning their new Standards of Conduct directive which they did not accept. A number of your recommendations were not agreed to by them. For instance, you pointed out to them that the Department of Defense had too narrowly defined the term "particular matter," as is used in the law, criminal law, thereby causing confusion as to what is and what is not permissible behavior. The issue here is whether or not participation in rulemaking by an employee is participation in a particular matter for purposes of the law.

Now, what this means, as I indicated in my opening statement, is that because of that narrow definition that was given to the words "particular matter" by the DOD, as a practical matter it means that the DOD employees are allowed to engage in conduct which all other Federal employees are, by criminal law, prohibited from engaging in. That is what the result is of this carving out of rulemaking from those words.

Now, it sounds awfully technical. I am not sure everybody can follow this conversation. But the principle is pretty important. What the DOD has said, in effect, is, "We are going to be governed by a different standard when it comes to the application of a criminal law on conflict of interest than everybody else in the Federal Government."

You have recommended against this. As I understand it, what you have urged them to do is to more broadly interpret the term "particular matter" so it includes participation in rulemaking.

What were the reasons that the DOD gave you for making the changes in the standards of conduct? Let me start with that.

Mr. DAVIS. Well, I guess I would like to first comment that I agree with you that perhaps from the viewpoint of OGE—and I will speak for myself as chief counsel—this is the most important change that is discussed in some of the materials in our audit report.

Senator LEVIN. You mean recommended change?

Mr. DAVIS. The recommended changes. This to me was the most important. And I guess my answer to you then is going to be that this is the one we hung on to most—we took a stronger position when we were dealing with DOD.

By the way, this was a continuous dialogue, as I said, back and forth. Point in fact, they have agreed to adopt our position. They did agree at the time that we did our legal review of their directive. I guess the real question is: Has there been implementation of the change? I thing that is the real question. I might add that since——

Senator LEVIN. Well, there has not been, I gather.

Mr. DAVIS. Well, since that time, we have reviewed the Department of Army's implementing regulations on this issue, and they have included it. And they have included it with language that we insisted be in there.

Senator LEVIN. So part of the DOD has and part has not?

Mr. DAVIS. So it has. That is correct.

Senator LEVIN. No. Part of the DOD has and part has not?

Mr. DAVIS. Part is in the process. I might add the Navy currently has their regulations under review with our office, and, of course, we will insist that they reflect the same language as the Department of the Army. And it is in there right now in the drafts we are working with. Yes, sir.

Senator LEVIN. Well, but you made this recommendation for some time, and in their standards they did not adopt that recommendation when they came out. Is that correct?

Mr. DAVIS. Yes, well, I guess I would have to put it in a time frame. We received the proposed regulations in May, and in June, because we were in such close contact, we worked on a daily basis with the General Counsel's office. They were very concerned about implementing—getting the regulation on the street, getting a final regulation on the street. And they came to our office and asked, because of the effective dates of this new legislation that was addressed earlier—the post-employment proscriptions dealing with contract activities; reporting requirements. They were very anxious to get their final regulation on the street.

They came to us and said, Look if you agree to our putting out our final regulation, any changes that will have to be made, we will then amend the final regulation.

Senator LEVIN. So they did not have your recommendation before they published their final recommendation?

Mr. DAVIS. We were working on it. We were working together at that time.

Senator LEVIN. I know that. But did they know what your recommendation was when they published their final regulation? That is my question.

Mr. DAVIS. I would have to say no at this point. I would have to say that we——

Senator LEVIN. Mr. Pratt was shaking his head yes, I think.

Mr. DAVIS. Well, let me put this way: I think they were certainly aware of the Justice position. They were aware that we wanted it changed. I do not think they were aware that we would not budge on this one. We compromised, and I think we should by the way, based on the mission of the Department, the agencies. I do not think you can achieve true uniformity.

But I do not think they realized that position that we might take when we got right to the final—we will not approve your regulations or we will withdraw our approval if you do not have it in there. And I think that if the final regulation had not been out and they had indicated to us that they would not adopt this position, of course, we would not have approved the regulation.

Senator LEVIN. Did you then approve their publishing final regulations prior to your giving approval to those regulations?

Mr. DAVIS. Yes, we did.

Senator LEVIN. You did agree to that even though the law requires that you substantively approve the regulations before publication? You waived that?

Mr. DAVIS. That is correct. Based on the understanding, based on the understanding, the preconditioned understanding that any changes that we came up with that they would make them. They would make those.

Senator LEVIN. The standards of conduct of the DOD require that the ethics officers develop and ethics training program. In each of the services' standards is a training section which generally says that incoming and outgoing officers and employees are to be briefed on ethics and are to receive annual or semiannual reminders on their ethical responsibilities.

Have your audits found this to be the case?

Mr. DAVIS. Our audits, yes, in this sense: We found that they had an adequate training program in terms of—if you want to sort of score against other agencies, they have an adequate training program.

Senator **Levin**. No, not a score between agencies. A score as to what they should be doing.

Mr. **Davis**. Well, I think there was always room for more improvement. No question about it. More resources could be devoted to training.

On the other hand, they were doing a lot of training at the time.

Senator **Levin**. Your report found that there was a lack of communication between the personnel office for the OSD and the Ethics Office, so that the Ethics Office was not informed of new employees and departing employees. Thus, they could not provide the comprehensive incoming and exiting counseling. That is what you found. Is that satisfactory to you? Are you satisfied with that?

Mr. **Davis**. No.

Senator **Levin**. Well, why do you say it is adequate then? If it is not satisfactory, why is it adequate?

Mr. **Davis**. I guess you have to start with is there any training, and yes, there was training.

Senator **Levin**. You do not start with is there adequate training?

Mr. **Davis**. Well, you start with the idea that——

Senator **Levin**. You start with is there any training?

Mr. **Davis**. Well, I think you have to start with a very practical approach to what you are going to achieve out of any system, any training program, any public financial disclosure. I think we are always working towards a more efficient operation. But I cannot slight DOD and say they are not doing enough when they are doing more than other agencies. That is the way I think we have to——

Senator **Levin**. Other agencies, you are saying, are not doing this ethics training either? There is no connection between the personnel in the Ethics Offices and the other agencies so that you can have this ongoing ethics training. That is what you are saying.

Mr. **Davis**. Well, all I am saying is that that is an area that could be improved in DOD. In other agencies——

Senator **Levin**. No, I thought you said they are better than other agencies in that regard. I am asking you: Do other agencies then also have the disconnect between the Ethics Office and the personnel office so that there is no knowledge of who is coming in and leaving? Is that what you are saying?

Mr. **Davis**. In some cases, yes, that is what I am saying.

Senator **Levin**. In general is that true?

Mr. **Davis**. I will not characterize it because I do not think that I personally could tell you. I have not reviewed all the reports to tell you that.

Senator **Levin**. Okay. Now, then, since you cannot compare it to other agencies generally, now let us talk about OSD. Are you satisfied with their training and the disconnect between the Ethics Office and the personnel office? Are you satisfied?

Mr. **Davis**. No, I am not satisfied with that.

Senator **Levin**. Do they know that you are not satisfied?

Mr. **Davis**. Yes.

Senator **Levin**. And their response is?

Mr. **Davis**. I think their response is that they were trying to improve that relationship. They were trying to improve, for instance, through this newly created council—a concrete example perhaps might be—if I could give you an idea—the Ethics Oversight Committee, one of the specifics that we came across was, for instance, picking up training materials from the Defense Mapping Agency. I think it is a good idea and very constructive that you go to your components. And if your components have a pretty good program, you might co-opt that program and use it throughout all the other components and all the other military services. That is a very positive step. And that is one of the things that we saw when we were there.

Senator LEVIN. Senator Cohen?

Senator COHEN. Is it fair to say that you are not satisfied with the adequacy of the programs to date at DOD, but you generally conclude that they are doing more than others?

Mr. DAVIS. I think that is a fair statement, yes.

Senator COHEN. That means we got a problem in the others?

Mr. DAVIS. That is correct. We have problems throughout the system.

Senator COHEN. Now, in your audit report, out of 60 confidential financial disclosure reports that you examined, I think you found substantive questions raised in 17, nearly a third of those. Do you know whether the Department has taken any steps to improve problems that you identified in the confidential financial disclosure statements?

Mr. DAVIS. In the case of the Office of the Secretary of Defense, no. We do not know that at this point.

The normal procedure in one of our audit reports, Senator, would be to complete the audit, submit it to the agency, ask for a 60-day follow-up letter, response letter, and then follow it up with a 6 month review. We are remiss in the case of the Office of the Secretary of Defense in that we have not accomplished that on our part. We just have not been able to do it at this point. We are behind schedule on it. We have done it in connection with the other reports that you asked about, the Air Force, the Navy, and the Army. We have made those kinds of follow-up, and I would be in a position to tell you that on the others but not on the Office of the Secretary of Defense.

Senator COHEN. Now, would you say that it was impracticable for you to do so?

Mr. DAVIS. Definitely. With the resources that we currently have available for our audit program, yes.

Senator COHEN. So is it then fair for me to conclude that it be inappropriate for us to condemn the Office of the Secretary of Defense for having a provision that says, to extent it is practicable, to implement this and have us very critical of that, and then yet have the Office of Government Ethics be unable to complete its oversight under its procedures because it is not practical to do so?

Mr. DAVIS. That language—I was sitting back there, and I was wondering if I was going to get that question. And I have got it, and I have to be very truthful with you. I think I have to be very realistic because I put myself in the same position that many of these ethics officials are in. And I hurriedly pulled out the Army regulation, and we talked about written memos and telephone logs. And I have to tell you that I can keep a telephone log and perhaps make some very cursory entries. But I do not see as a practical matter written advice memorialized, in the terms that the IG was talking about either back in 1985 or at this table this morning ever taking place. And I think to strive for it is very commendable, but I do not think we will ever get there. We will not get there in my office, and I will not get there personally. And I think I have the same kind of practice that this Standards of Conduct Office faces on a daily basis.

That bothered me in 1985, personally, and we responded in a separate letter to many of the items that were in the 1985 IG report. We went over and talked to the DOD folks about it. We talked specifically to the staff action officer that was involved in the report that we sent to you, and we tried to come up with a system—because we identify with that same problem—of how we could correct that.

The best that we could come up with was pre-written advice that could be tailored, that we would all use, perhaps, say, in an exit briefing, so that we, so to speak, would all be singing from the same song sheet; so that at least when somebody questioned us in the future and said, well, such-and-such said this, that the average person would say it would be more realistic for that officer to sit there and read from his prepared notes, and then simply perhaps jot down some pertinent facts. And even if he did not memorialize that, he would be using the same kind of briefing material. And we tried to do that. And we have done that and they have done it in many instances because I tried to help them put it together.

So when they came in with this language, as a practical matter, I think that is good. I think personally an attempt to legislate in that area would be a waste of time.

Senator COHEN. Let me stop you there. Now, why is it impracticable for you to do so? Is it a question of not enough manpower?

Mr. DAVIS. Sure. I talk in terms of my own personal experience, and that is what I am telling you. You have to have sort of a sense of what is important. And, of course, on the important ones, you better memorialize what is happening. But every now and then, one will get away from you, and the one that gets away from you is the one that ends up in the newspaper.

I have one, I might add, in a personal experience, a telephone call, I just jotted down three sentences. And that was the basis of a criminal prosecution involving a highranking Postal official. I was lucky that I put that down. On any other given day, I wouldn't even put down that much.

So I cannot accept any premise personally that says that you can write down everything that happens. Not in this area, there is too much going on. There are too many calls. It is too hard to distinguish the important ones from the non-important ones. Your time is divided between many, many facets of the program, and you would be spinning your wheels. I do not think we would do as good a job if we were covering ourselves in this area.

Senator COHEN. Okay. Did you examine how the Department handles that Form 1787? These are the reports that are filed by former DOD personnel if they leave and go into defense-related jobs. How does the Department handle those forms?

Mr. DAVIS. That was just brand new at the time; it was just coming abroad. We are readily not in a position to talk about the implementation of that system because, as I say, we have not been back since that system went into effect. We really have not spent the time that we should in that area.

Senator COHEN. Do you agree with the IG's view that there should be a total ban on all gratuities and benefits by individuals who work in procurement organizations?

Mr. DAVIS. I would like to give you a yes or no answer, but I will not. Again, I do not think I can. I think it would be much easier to monitor and enforce a program if you had an absolute prohibition. And as an enforcement officer, it would make my job a lot easier. But working in the system and knowing the problems and the mission of the agency, I think, again, when talking in a practical sense you should not have a total ban.

Let me tell you why. We have put out our one-on-one luncheon memo, and I think at that level, down to that level, it works. We have had a lot of problems, a lot of comments on our one-on-one luncheon memo. But when you get down into the free coffee area—and here is the area that concerns me, the gray area—you are almost talking about a de minimis area when you start talking about coffee and donuts. And that is where DOD, in our opinion, balked, when it came to the coffee and donuts area. There, we backed off a little. I backed off. I did the initial legal analysis in our office because I think there comes a point in time when you are in this gray area right where you are talking de minimis. If you are talking $10 for promotional items, or if you are talking coffee and donuts, the agency should have some discretion.

Senator COHEN. Should there be any requirement of just disclosure, as opposed to a ban?

Mr. DAVIS. Again, I think it depends on what degree you are talking about. If you are talking about disclosure for a cup of coffee, then I think you might be doing more damage—or at least the argument can be made that, for my purposes, for the purposes of enforcement, I prefer the outright ban. But I am not sure that the mission of DOD is best served by that kind of rule.

Senator COHEN. I have a copy of the exit briefing and entrance briefing on the standards of conduct for DOD personnel. These call attention to the forms have be filed when you either leave or begin service with DOD. Do you think there is good information in those particular forms?

Mr. DAVIS. I think there is some usable information. But, again, as I say, I am not sure that I know enough about the actual implementation to give you any kind of a constructive evaluation of whether it is working or not or whether that will help in the long run.

Senator COHEN. That is all I have.

Senator LEVIN. Thank you, Senator Cohen.

Going back to the gratuities issue, would you agree that a $100 gift is not de minimis?

Mr. DAVIS. Sure. I sure do, Senator, and I think that is wrong.

Senator LEVIN. But it now is allowed on some of the services?

Mr. DAVIS. It is allowed, but I will tell you again: I think the approach—and I agree with the IG if I understood the testimony. I think the approach is that if you have a statutory provision that permits it in christening the ships, for instance, and they take it and apply it across the board and say aircraft rollouts should be treated the same way——

Senator LEVIN. That is not my question.

Mr. DAVIS. No, I think it is wrong. I think it should be eliminated. I think it should be eliminated from the statute also.

Senator LEVIN. Let us just focus on what exists that should be eliminated rather than some other question. Something exists out there, a $100 gratuity, which you feel should be eliminated, right?

Mr. DAVIS. Across the board.

Senator LEVIN. What is the defense that you get from the branches of the DOD that allow it?

Mr. DAVIS. The rationale, as I understand it, is just as has been stated here earlier; that once you had a statutory provision treating one activity that way, it seems to be the benchmark for treating other activities that way.

Senator LEVIN. The statute, you say, says $100 is the maximum for a particular activity.

Mr. DAVIS. As I recall. I may be incorrect, but it is my understanding that it is $100 for the ship christening ceremonies. Yes. Somehow, they got——

Senator LEVIN. That is in statute.

Mr. DAVIS. That is in statute.

Senator LEVIN. That is in the statute, and so it has been interpreted to apply to similar ceremonies.

Mr. DAVIS. That is correct, in the way of aircraft rollouts and that sort of thing.

Senator LEVIN. Interpreted by OGE and by the branches, the agencies?

Mr. DAVIS. Yes, sir. They took the position that that is the way this particular activity should be treated, and we sort of went along with that.

Senator LEVIN. Now, I also want to go back to another area we talked about, and that is the question of conflict of interest and the issue "particular matter," whether it would cover rulemaking.

The standards were published finally, you said with your consent.

Mr. DAVIS. Yes, sir.

Senator LEVIN. You gave them permission even though you had not approved them, making it clear to them that you were going to later on have some changes that you were going to propose, and they said they would agree in advance to those changes?

Mr. DAVIS. Yes, sir. They specifically agreed to change their regulation to incoporate the change.

Senator LEVIN. The rulemaking provision?

Mr. DAVIS. That is correct.

Senator LEVIN. And are all the branches of DOD now going to do that? Are they now agreed that they will do what they said they would do?

Mr. DAVIS. Let me put it this way: As I said, the Army has completed it. The Navy is in the process.

Senator LEVIN. That is why I said all branches.

Mr. **Davis**. No. The DOD directive, 5500.7, has not been changed. It should be changed. And we have not gotten the Air Force yet.

Senator **Levin**. And they agreed to change it?

Mr. **Davis**. They agreed to change it last year.

Senator **Levin**. No. When you press them about carrying out their commitment of last year, have they said they will do it and when they will do it?

Mr. **Davis**. They owe us one on that one. They owe us a change. I think it should be changed, and I think it should be changed now. I think it is very important to be changed.

Senator **Levin**. And when you point that out to them what do they say?

Mr. **Davis**. Well, I do not know what they say, Senator, right now. I do not know why it has not been done. They agreed with us. They said they were going to make the change. But it just physically has not been accomplished.

Senator **Levin**. Okay. We will ask Miss Buck.

The other question relates to the training. You have indicated that there are other agencies you think are worse than the DOD when it comes to the ethics training that we have talked about for incoming and outgoing employees. At least some agencies you think are worse. Do you have the authority to issue a directive to all agencies to require that training? Does the OGE have that authority?

Mr. **Davis**. Yes. I think it is . . . I am not sure what kind of authority would go into—we have always pushed it with every agency. Every agency attempts to allocate resources. No one will disagree that it needs to be done.

Senator **Levin**. My question is: Do you have the authority to direct that it be done?

Mr. **Davis**. I am not sure. I suppose we do. And I suppose that if we directed every agency, I think they would all comply.

Senator **Levin**. Should you do that or not? If you feel it ought to be done, should you direct it when it is not being done?

Mr. **Davis**. I think we should. I guess the question is how much, though. I do not know how to direct or I do not know how we would accomplish it unless we put out criteria that said you would have to have X number of training sessions a year. We have never gone that far.

Senator **Levin**. Well, I am not saying what you should believe. You said you believe there should be training for those folks, education for those folks. We are talking about there exiting and coming in. We are talking about possible conflicts of interest and revolving door, to put it in blunt words.

Mr. **Davis**. Sure, sure.

Senator **Levin**. And telling people what their obligations are. Coming in, you are telling them what the conflict of interest rules are. Leaving, exiting, you are talking about what the revolving door rules are. Without getting into the substance of what that training should be or how extensive it should be, you have said you feel it ought to exist. You know it does not now exist. My only question is: Do you believe you have the authority to direct them to do it? That is my question.

I am not trying to——

Mr. DAVIS. No, I understand. And I think the answer is yes, and I think if we went to an agency and they were not doing any, we would direct them to do the training. But, you see, I think one of the problems—I agree, for instance—I personally was not aware of the fact that they are not doing enough procurement-related training.

Senator LEVIN. Whatever the specific amount is, you feel the agencies are falling down in this area. There is no use splitting hairs here. You have reached a conclusion that a lot of agencies are not doing what they must do. We have reached a similar conclusion, so I am not going to disagree with you. All I am asking you is: Why not use the authority you have, then, to direct them to do what you have asked them to do?

Mr. DAVIS. Well, I think we can.

Senator LEVIN. OK. Would you get back to us, then, with your decision as to whether you will use that authority; and if not, why not? Just let us know that in the next couple months.

Mr. DAVIS. Sure Senator.

Senator LEVIN. The would be great. Thanks so much.

Senator Cohen?

Senator COHEN. Thank you both. We appreciate your coming.

Mr. DAVIS. Thank you.

Senator LEVIN. Our final witness today is both the designated agency ethics official and General Counsel, Office of the Secretary of Defense, Kathleen Buck, accompanied by Dave Ream, who is the senior attorney, Office of Standards of Conduct of the General Counsel's Office, and Lt. Col. John Shaughnessy, who is with the Office of Standards of Conduct in the same General Counsel's Office.

Ms. Buck, we welcome you and your colleagues. Appreciate your coming by. We know this wasn't a lot of notice but we wanted to have a chance to talk to you, and you, apparently, weren't going to be here next week and we weren't going to be here the week after or whatever. We were hoping we wouldn't be here the week after. Strike that. I guess we are going to be here the week after. That is the notice we are getting from Senator Cohen today. In any event, Ms. Buck, thanks for coming by.

Do you have a statement you want to start off with?

TESTIMONY OF KATHLEEN A. BUCK, GENERAL COUNSEL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY DAVE REAM, OFFICE OF STANDARDS OF CONDUCT, AND LT. COL. JOHN SHAUGHNESSY, OFFICE OF STANDARDS OF CONDUCT

Ms. BUCK. Yes, sir, I do. I have a prepared statement and I will submit that for the record [1] and merely address some of the major points that I wanted to make here.

Senator LEVIN. OK. Thank you.

Ms. BUCK. I appreciate the opportunity you have given me to answer some questions concerning the management of the Standards of Conduct Program of the Defense Department. We have developed an aggressive Standards of Conduct Program designed to educate all of our personnel in the importance of ethical rules, to train all our ethics advisors and keep them abreast of new development, and to investigate promptly allegations of impropriety, and ensure proper enforcement in those cases where transgressions have occurred.

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[1] See p. 77.

In April of 1987 new statutes creating complex reporting requirements and post-employment restrictions became effective. Absorbing all these changes has proven to be a time-consuming process but has not, in my judgment, kept the Department from maintaining a vigorous program.

As was discussed here earlier today, overall guidance on our Ethics Program comes from the Office of the Secretary of Defense, and the General Counsel is the Designated Agency Ethics Official for OSD. These Department-wide responsibilities of the General Counsel, working through the Assistant General Counsel, Office of Legal Counsel, and his Standards of Conduct office, include the DOD Standards of Conduct Directive, the focal point for Standards of Conduct issues, meetings of the Ethics Oversight Committee, and post-DOD reporting programs.

With over 3 million people, the Department necessarily operates in a decentralized manner. Each of the components maintains its own Standards of Conduct Program under our direction, but reporting directly to the Director of the Office of Government Ethics.

We are constantly working to improve the enforcement of the ethics laws and regulations, and we favor strict enforcement of Standards of Conduct laws. However, we strongly believe that the constant changes in the rules during the past 2 years, and the changes pending before the Congress now, have the potential for damaging our compliance efforts and lessening respect for the rules of ethics in general.

The principles of ethics have not changed. But defining where the corners are and providing the road map are the necessary functions of the lawmakers and those of us who write the regulations. It seems to me that we are also responsible for making sure the road signs remain in place for a while after we erect them. Our people are expected to get the job done under heavy budgetary and time constraints. They need clear guidance and they need it to be constant. Thus it seems to me that leaving the rules alone, at least until we find out how they work, is one of our most important responsibilities.

One group of statutes which applies only to the Department of Defense is 10 U.S. Code 2397, 2397b and 2397c, which deal with post-government-service employment restrictions and reporting requirements. We have been working closely with the staff of the House Armed Services Committee to try to bring these statutes into conformance with each other and thereby to enhance their utility and enforceability. The staff has been most cooperative and we expect to reach an agreement this year, but probably not in the waning days of this legislative session. Our experience with those provisions reinforces our belief that legislation which directs the Secretary to provide specifics in regulations is superior to legislation which attempts to lay down such specifics in advance.

Finally, let me again endorse the policy of the Department of Defense to have a sound and effective Standards of Conduct Program.

We recognize and appreciate the interest of this committee, think that our cooperative efforts have produced some new approaches to reporting and enforcement of the rules that will help to strengthen the program. I expect that future rules will build on this progress.

I'd be happy to answer your questions.

Senator LEVIN. Thank you so much, Ms. Buck.

Senator Cohen.

Senator COHEN. Ms. Buck, I just want to follow up on that suggestion about not changing the rules too often. I think the point is well taken, but let me give you the converse, also.

We have been involved for a number of years in the independent counsel law that was passed back in 1978. We made changes in 1982, and then again in 1986. What we found in the 1978 law was that we were, perhaps, being too stringent in the application of certain rules. Officials who would ordinarily not be penalized were being penalized. And so we made some changes in 1982. We made changes again in 1986.

Would you recommend that if we look at these laws that are passed on conflict of interest, revolving door, and so forth, and find major deficiencies, that we still wait several years to find out how they are implemented, even if we detect deficiencies on their face?

Ms. BUCK. Well, it has been my experience that after a new law, particularly in the conflict of interest area, goes into effect it takes us about 3 years to implement the program, ensure that we have an effective training program so that we can alert people to what the law is intended to do, and to do these things takes time. It takes about 3 years for us even to make, I think, an informed decision on whether or not the law is working and working well.

Senator COHEN. What if we found that we had mandated a written report on every call made by a procurement official with a contractor, and based upon testimony we have heard today, we find that to be impracticable or onerous and really counterproductive? Should we wait three years and leave the written requirement in, or take it out?

Ms. BUCK. On your particular example I could probably give you a very early opinion, I think. I am not saying that you shouldn't recognize the deficiencies when they exist and they are apparent. But when you have a complex reporting requirement——

Senator COHEN. All I am suggesting is it cuts both ways.

Ms. BUCK. Right.

Senator COHEN. We may find that we have written a law and perhaps it is too restrictive and may produce the contrary result. If that is the case, I certainly wouldn't want to wait and give you three years to see how it is working out.

So the reason for this hearing is to find out what has been done, is it enough, is it too much, is there some area in which we tend to get fairly arbitrary. We want to look at whether it is appropriate to have a flat rule, a rule of thumb instead of a rule of reason, and all of the injustices that such a rule might produce.

So just to put it in that context, I take what you are saying with some substance.

Ms. BUCK. From my standpoint, I think it just needs to be a very thoughtful process, and particularly I think this summer in the wake of the "Ill Wind" investigation I have been concerned that, in part perhaps because of frustration, action would be taken too quickly, before we had all of the facts.

Senator COHEN. This Subcommittee, Senator Levin, myself, and other on the Subcommittee, have been interested for many years in investigating waste, fraud, and abuse. Those are the three most frequent words that we are prone to invoke.

Ms. BUCK. Yes.

Senator COHEN. And we have been involved in the issue of computer matching because technology is here and we have been trying to strike a balance in terms of being efficient with how we spend tax dollars yet on the other hand, being concerned about privacy issues.

And the question I have is whether computer matching might be a desirable procedure to employ, as to whether or not the Department of Defense or any of the components within DOD take any steps to match up lists of former employees of the Department with those who are now doing business with the Department in order to monitor compliance with the revolving door issue.

Ms. BUCK. Yes, sir. I was shaking my head because I am very interested in computer matching. In fact, I think that computerization can be a wonderful management tool for the Federal Government, and we need to look at it for many purposes. And I think enforcement of the law is a very good place that it might be useful.

Senator COHEN. But does DOD?

Ms. BUCK. There are a couple of ways I think we can use computer matching. I think that in terms of checking on employees coming and going we can try to use computer matching. We, with respect to the Form 1787 that had been discussed here earlier today, we have had some discussions, some helpful discussions I might add, with GAO on ways that we can use a computer program to match up contractor reports with the reports that we are receiving from individuals to bring up our enforcement levels, and we are pursuing that.

To the extent that you would have any other suggestions on ways that we might be able to effectively use a computer matching program, I am certainly open to such suggestions.

Senator COHEN. I take it, then, that at this point the answer is no. That the DOD does not have a policy of using computer matches to try and determine compliance with the revolving door.

Ms. BUCK. We are working on such a computer program, matching system. One of the disconnects we have had is on having some reports filed on a fiscal year basis and some filed on a calendar year basis, and that has made for some difficulties from a technical standpoint.

But my policy would certainly be to favor it. If we can use it, and we can use it now, great.

Senator COHEN. I have just one other question, Mr. Chairman.

Whose responsibility is it to monitor these recusal agreements that are signed when a person comes in from the private sector into the Department of Defense?

Ms. BUCK. Generally, there would be a couple of people involved in supervising a recusal. Generally, a person's superior and possibly that person's subordinates. You generally would have a situation where the superior would not be sending work in involving a recusal. In addition to that, the people who would be taking in the incoming mail would also be monitoring it so that they could stop any paperwork from coming into that office dealing with that particular recusal.

Senator **Cohen**. Well, I have a particular case in mind. Mr. Paisley has been in the papers quite a bit for the past year. Now my understanding is that he filed, or signed such a recusal agreement upon entering the Department of Defense service and within a week after having signed that agreement may have started to have contacts with Boeing.

The question I have is whose responsibility would it have been to monitor either the flow of paperwork or his contacts with a former employer? What mechanism was there other than his superior to monitor that?

Ms. **Buck**. Well, ordinarily, as I indicated, you would have others within his immediate office who would be notified of the recusal so that paperwork or phone calls, whatever, could be stopped from coming into the office.

Obviously, I can't comment on Mr. Paisley because of his name being mentioned in reference to the ongoing investigation.

Senator **Cohen**. Well, I don't want you to do that either. I just was curious in terms of what procedure there is now, how systematic it is.

Ms. **Buck**. That is how it would work as a practical matter.

Senator **Cohen**. Thank you very much, Mr. Chairman.

Senator **Levin**. Thank you, Senator Cohen.

Just backing up on that issue, the recusal system obviously did not work in the Paisley case.

Ms. **Buck**. That is something that would be within the Department of the Navy. I would have to go back and check our records to determine whether there was a problem there.

Senator **Levin**. Let me give you the facts, which I don't believe have been disclosed.

Ms. **Buck**. You know I am really——

Senator **Levin**. I don't think they have been disclosed.

Ms. **Buck**. I am really very hesitant to get involved in any matters involving Mr. Paisley.

Senator **Levin**. Well, do you have any information as to what is going on in that U.S. Attorney's investigation?

Ms. **Buck**. Well, I would have some information just because——

Senator **Levin**. Well, we won't ask you for your comment on anything that comes out of that investigation.

Ms. **Buck**. But talking about an individual who has been specifically named as, you know, one of the—on the FBI list, troubles me.

Senator **Levin**. It doesn't trouble me at all. You can't do anything which will jeopardize his trial. There is nothing here that we are doing which would jeopardize his trial. This isn't what he might be indicted for. We are talking here about a recusal.

Ms. **Buck**. Mr. Paisley hasn't been indicted.

Senator **Levin**. We are talking about a recusal agreement here and how they are enforced.

Ms. **Buck**. Well, also, on Mr. Paisley, you know, I can pull out his recusal form and run a check on that, and that is what I would want to do. Obviously, it is a check to set the record straight.

Senator Levin. But let me give you the facts so you will know what do check on. We don't know whether Mr. Paisley is going to be indicted or not be indicted.

Ms. Buck. That is correct. I do not know.

Senator Levin. Now let me tell you what we do know.

Ms. Buck. All right.

Senator Levin. He was receiving a pension of $24,000 from his employer—Boeing. He was disqualified, or was supposed to be disqualified from being involved in any issue involving Boeing from December 3, 1981 until April 2, 1982. At the end of that period of time he received a waiver from the Deputy Secretary of Defense.

But during that period he did not have a waiver. However, 6 days after signing his disqualification, Paisley wrote a letter to the Chairman of the Board at Boeing concerning the appointment of persons to the Naval Research Advisory Committee.

During this period where he was disqualified he recommended two Boeing employees to serve on that committee. He also, apparently, met with or had others meet with officials at Boeing's Vertol Company, in Pennsylvania, that was bidding on the Joint Services Advanced Lift Aircraft—JVX. And less than 2 weeks after meeting with the company's president, Mr. Paisley apparently requested accelerating the development of the JVX.

Paisley also apparently ignored another recusal. On April 6, 1983, he disqualified himself from participating in any particular matter involving the BDM Corporation because his wife had decided to begin working for BDM. That recusal stayed in effect until Mr. Paisley left the DOD in March of 1987. But during 1984 Mr. Paisley appointed the president of BDM to the Naval Research Advisory Committee.

And now let me mention something about his deputy, James Gaines, who apparently followed Paisley's example. Although he was barred from taking any action in connection with matters involving Boeing since September 19, 1986 because of his pension from Boeing, Mr. Gaines was apparently briefed by officials of Boeing Aerospace over a 3 or 4 day period in October of 1987 on a new electronics system that Boeing was designing for the Navy's P-3C submarine reconnaissance aircraft.

Now the question is what oversight is there for these recusal agreements? And what we are going back to here is the Office of Government Ethics. In 1983, the Office of Government Ethics expressed concern that there was no system at the DOD for monitoring recusal agreements. What system do you have now for monitoring recusal agreements?

Ms. Buck. You cannot—what you are talking about is a situation where you would have to have someone sitting with an individual who has recused himself on a daily basis to monitor everything that person says or does. If that is the kind of system that you are looking for, we do not have that.

Senator Levin. I am asking you what system you have.

Ms. Buck. But within an entity like the Department of the Navy you have ongoing involvement in these kinds of activities by the Office of General Counsel and by the persons——

Senator Levin. You say ongoing involvement in these kinds of activities.

Ms. BUCK. Right. Well, for example——

Senator LEVIN. Could you be more specific?

Ms. BUCK. On advisory committees, for example. Advisory committees and the way they are set up and the way the conflict of interest forms are reviewed, the General Counsel's Office is very much involved. But with respect to the matter that you are talking about, I will need an opportunity to go back and to check with the Navy on what happened there. Obviously that is of concern to me, and I will do that and I will be happy to report back to you. But I think——

Senator LEVIN. Well, it is not only concern to us, but it obviously was of concern, as early as 1983, to the Office of Government Ethics.

Ms. Buck. Oh. You mean on the systems of checking?

Senator LEVIN. On the system. There is no system for monitoring. We haven't heard a system here today, other than you say there is "ongoing involvement". I mean, that is not a system. And then you hold up a possible system which doesn't make sense and say if that is what you are suggesting it won't work.

I am asking you as to what the system is for monitoring recusal agreements. Let me give you one possibility, just off the top of my head.

Do the companies, such as Boeing in the case of Paisley, get a copy of the recusal agreement?

Ms. BUCK. No. I do not believe that Boeing would have received a copy.

Senator LEVIN. Shouldn't they know that he has recused himself from those matters?

Ms. BUCK. I think that is a good point.

Senator LEVIN. Just thought of that about 5 seconds ago.

Ms. BUCK. No. Ordinarily we don't talk to the companies about a matter like that.

Senator LEVIN. Okay. So you think that the companies that he or she is not supposed to talk to should know that they are not supposed to talk with that person?

Ms. BUCK. Exactly. Of course you run into some problems on the practical side in that you would have to have every person in Boeing Corporation alerted to that fact if you wanted to try to put them on notice that they couldn't contact him. I think that the recusal and making sure that the person doesn't take action on that company—should be dealt with in the office of the person who has recused himself or herself.

Senator LEVIN. Don't you think that if somebody comes to the Government from a company, and there is a recusal agreement, that there ought to be a presumption that the company is not supposed to be talking to that person if there is still an ongoing financial interest, like a pension?

Ms. BUCK. You mean should the company simply——

Senator LEVIN. Yes. I mean, you are talking here about briefings.

Ms. BUCK. Certainly I can think of situations where if someone was aware of a recusal, it would help. But you could have various people within a company who wouldn't know that that person had worked for that company. That could easily happen.

Senator **Levin**. How about the Chairman of the Board? Do you think the Chairman of the Board at Boeing knew that Mr. Paisley worked for Boeing?

Ms. **Buck**. In Paisley's case, I would think so.

Senator **Levin**. I would, too. And the Chairman of the Board got a letter from Mr. Paisley 6 days after he recused himself.

Ms. **Buck**. Right. But, if you were talking about a lower level employee within Boeing Corporation, then not necessarily, because some of these companies have 25,000, 50,000 employees, so you couldn't expect the chairman of the board to know every person in the company by name and to know whether the person that they were calling in the Government necessarily was one of their former people.

Senator **Levin**. Well, I am talking, in the case of Boeing, the Chairman of the Board.

Ms. **Buck**. Well, in Paisley's case, I would think that the Chairman of the Board would be aware of the fact that Paisley had worked for Boeing Corporation.

Senator **Levin**. Well, we will wait to hear back from you, but I've got to tell you that I am deeply disturbed when I see this happening, where we have got a recusal agreement. We don't know if Boeing knew about the recusal or not. It is hard to believe they didn't, and I would like you to find that out for us. Just ask Boeing. I mean there is a simple way to do it. Just simply Boeing: Were you aware of the fact when you had these contacts with Paisley that he had recused himself?

And, if they weren't aware of the recusal, then the question is how can we make sure that companies are at least made aware of them so the companies are on notice that they are going to be held accountable if somebody who had recused themselves is doing business with them.

I think we at least have got to enforce recusal agreements to that extent. Otherwise, they don't mean a thing. There is no criminal enforcement for them, as far as I know. Although I may be wrong, I don't think there is a criminal violation if you violate your recusal agreement.

Ms. **Buck**. It would depend on the situation.

Senator **Levin**. Well, if there is a conflict——

Ms. **Buck**. There would be a possibility there of a criminal enforcement.

Senator **Levin**. If there is a conflict of interest, you violate the criminal law.

Ms. **Buck**. That is what I am talking about.

Senator **Levin**. But is the violation of the recusal agreement in and of itself a crime? I don't know. I don't think it is.

Ms. **Buck**. No. No, I don't believe so.

Senator **Levin**. The underlying facts may——

Ms. **Buck**. The underlying facts. You would have to look at the particular facts to make any decision.

Senator **Levin**. But the fact that you violate the recusal itself is not a crime. It is the underlying facts and whether they represent a conflict of interest.

Ms. **Buck**. That is correct, I think.

Senator **Levin**. So what I would like you to do, if you would, following the suggestion of the OGE in 1983, is let us know in this case what happened. You are perfectly free to find out what happened. There is no indictment or pending trial. All we have is newspaper reports that somebody is being investigated. We have a right to look into this matter.

This information I gave you did not come from the U.S. Attorney. I haven't had any contact with the U.S. Attorney. So you are free to look into this.

And also, perhaps even more generically, please tell us what you think can realistically be done in the recusal area to put some teeth into it. If you would get back to us on these Paisley facts and on the question of putting teeth into the recusal program as OGE recommended as early as 1983. Okay? Can you do both those things?

Ms. **Buck**. Yes, sir.

[The information referred to follows:]

The recusal or disqualification system set up by the Office of the Secretary of Defense (OSD) consists of the following:

1. Educating individuals about the restrictions of 18 U.S.C. 208 and the availability of disqualification as a means to avoid conflicts of interest. Honoring of the recusal is the responsibility of the individual executing it.
2. Advising individuals who are uncertain on the issue as to whether a disqualification is required of them.
3. Individuals who disqualify themselves from certain activity are required to do so in writing (enclosure 9 of the DoD Standards of Conduct Directive, DoDD 5500.7).
4. The Standards of Conduct Directive requires that copies of disqualifications be given to immediate superiors and to immediate subordinates. The purpose of this requirement is to inform those people who are best able to screen the disqualified individual from receiving material or calls from any organization named on the disqualification.
5. A copy of the disqualification must also be submitted to the Designated Agency Ethics Official of OSD.

This system is a model for other DoD Components. The Components are required to devise separate systems for disqualification that are suitable for the unique needs of that Component.

Corporations named on a disqualification are not informed that an individual has been disqualified. Informing the corporation may seem like an obvious way to give a disqualification more impact; however, in most cases there would be little to gain from sending copies of disqualifications to corporations. It would be impossible to inform all the individuals of a corporation who might be in positions to prevent violation of a disqualification. This is because corporations, especially the larger ones, have many offices scattered all over the world. Our experience is that these offices have very little communication among them regarding administration matters. Although one office might be properly informed of a disqualification and duly avoid contact with the restricted Government employee, other offices of the same company, working on the same general project, would not be informed of the disqualification.

It is still unknown which Boeing representatives were aware of the disqualification filed by Mr. Paisley in December 1981. The General Counsel and the Vice President for Contracts at Boeing knew that Mr. Paisley was nominated for his position in the Navy and knew that there was a potential for a conflict of interest due to a retirement plan that Mr. Paisley held with Boeing.

I believe that the only way to "put teeth" into a recusal agreement is to prosecute those found to be in violation of the law that prohibits acting on matters in which they have personal interests (18 U.S.C. § 208). A large measure of trust must be accorded any individual found worthy to hold office in the Government. Such people make decisions that can have great fiscal and other consequences. It is not possible, and should not be necessary, to monitor the daily activities, phone calls, or personal conversations that these people have. Such draconian steps would be necessary to enforce compliance with a recusal agreement.

Senator **Levin**. We will leave that subject.

Now, on the Standards of Conduct generally, you issued a Standards of Conduct Directive in 1987, and they were a long time in coming, but that is water over the dam. It took too long to publish them, but they finally were published in 1987.

You received some recommendations from the Office of Government Ethics, and you were here this afternoon so you heard that testimony.

Ms. BUCK. Yes, I did.

Senator LEVIN. Are you going to be amending your Standards of Conduct to change the definition of "particular matter"?

Ms. BUCK. Yes.

Senator LEVIN. Has there been some resistance to that?

Ms. BUCK. No, not that I am aware of. We are making some other technical changes to the directive and we wanted to do them all at once.

Senator LEVIN. You wouldn't call that a technical change, would you?

Ms. BUCK. No. No. No. Just we have these other changes that we want to make in addition to that one.

Senator LEVIN. Did you realize how strongly the Office of Government Ethics felt about that issue when you published those regulations?

Ms. BUCK. No. I have never had a discussion with OGE on this issue, myself.

Senator LEVIN. Did anybody on your staff realize how OGE felt? Maybe the folks sitting here with you have some memory about this. You could check with them, perhaps. Did your office know how strongly OGE felt about this issue when you published your regulation?

Ms. BUCK. Not before it was published.

Senator LEVIN. Okay. Are these directives that you published in 1987, the Standards of Conduct Directives, are they handed out to all employees of the Department of Defense?

Ms. BUCK. I don't believe that every single employee gets a copy of the Standards of Conduct Directive. It would be publicly available to anyone who asked. But, for example, I would doubt that the janitorial service people would necessarily get a copy of the Standards of Conduct Directive.

Senator LEVIN. Does everybody who is a GS-16 or above get a copy at your directive? Do they have to have it?

Ms. BUCK. I believe that most of those people would get them upon entering Government service.

Senator LEVIN. Do you know whether or not they do?

Ms. BUCK. And then would get updates in various forms through our various training programs.

Senator LEVIN. Do you know whether or not, in fact, GS-16 and above people are all given these directives?

Ms. BUCK. I believe that upon entering Government service they are. But now you are getting into the promotion process too, and so if you are automatically promoted, do you automatically get a new copy of the Standards of Conduct Directive? No, I think you probably don't.

Senator LEVIN. I thought you said that everyone coming into Government service does not get it.

Ms. **Buck**. No. I think that most of the people coming into Government, into DOD, would be getting an ethics package.

Senator **Levin**. Are the Standards of Conduct included?

Ms. **Buck**. Which would include the Standards of Conduct Directive. But what they might be getting in a military department is the implementing regulations, which would incorporate the DOD Standards of Conduct Directive plus that component's additional regulations.

Senator **Levin**. Our understanding is somewhat different. Maybe you can check it out. We believe that your staff indicated to us that not everybody even GS-16 and above has received one of these copies.

Ms. **Buck**. Well, that is why I mentioned that——

Senator **Levin**. And you are saying, well, that would only be because of promotion.

Ms. **Buck** [continuing]. You get into the promotion process.

Senator **Levin**. Well, can you check that out and see whether or not, what the story is?

Ms. **Buck**. Of course.

Senator **Levin**. We are talking about incoming GS-16 and above.

Ms. **Buck**. Someone entering Government service? No. I would think someone entering Government service at GS-16 in any of our components would be getting a Standards of Conduct package upon entry.

Senator **Levin**. All of them do. Okay.

Ms. **Buck**. If they are coming in.

Senator **Levin**. And who is it that is responsible to hand those out to them?

Ms. **Buck**. Well, within each military department, DOD is decentralized, so it would be the Designated Agency Ethics Official.

Senator **Levin**. In the OSD?

Ms. **Buck**. In the Office of the Secretary of Defense I think that we would be giving those out.

Senator **Levin**. If you would just check around and see if that is accurate.

Ms. **Buck**. Yes, sir.

Senator **Levin**. If not, I think you would agree they ought to be.

Ms. **Buck**. Oh, yes. I do.

[Information submitted follows:]

Everyone who begins employment at the Office of the Secretary of Defense from outside the Department and is paid at the rate equal to a GS-13 Step 1 or higher receives a copy of the Standards of Conduct Directive, DoDD 5500.7. Those individuals are also given written ethics briefings that summarize disclosure requirements. Each individual signs a "Receipt of Directive" and receives a "DD Form 1787 Filing Requirement Questionnaire." The pamphlet, "Integrity Alert," issued by the Inspector General's Office, is also given to these incoming people. The DoD Standards of Conduct Office (SOCO) prepares these documents. The Personnel Office of OSD provides these documents to the individuals. An oral briefing on the standards of conduct is provided by an attorney from the SOCO upon request. A Personnel officer also is expected to check each incoming employee's personnel forms to determine whether such individual is required to file SF 278, "Executive Personnel Financial Disclosure Report," or a DD Form 1555, "Confidential Statement of Affiliations and Financial Interests." If the record indicates that the person must file one of these forms, then a blank form is given to the individual with filing instructions.

Those individuals paid at a rate of GS 13 Step 1 or above who leave the Department of Defense are given several documents during the normal outprocessing procedure in the Personnel Office. They are given written ethics briefings that summarize ethics disclosure requirements. Each receives a copy of the Standards of Conduct Directive, DoDD 5500.7, and signs the "Receipt of Directive." The "DD Form 1787 Filing Requirement Questionnaire," with instructions, is provided to help each person determine if the filing requirement of 10 U.S.C. 2397 will apply. If so, each is given a blank DD Form 1787, "Report of DoD and Defense Related Employment," and instructions. Other forms that may be required after leaving the Department also are provided. An information paper, "Memorandum for Departing DoD Civilian Officers and Employees" is given to all individuals paid at a rate of a GS 12 or above. Oral briefings on rules applicable during and after departure are provided by an attorney in the SOCO upon request.

The Standards of Conduct Directive requires each Component to initiate and maintain an education and training program. The program outlined above may be used as a model for the Component programs. Each Component has developed its own system to meet its own needs. In addition, each Component has included a basic outline of the education and training program in the Component regulation that implements the Standards of Conduct Directive. All major Components have submitted implementing regulation for DoD General Counsel review and approval. All have been approved, and final publication of each is expected soon.

Senator LEVIN. Back again to that 1983 OGE recommendation. They were critical of OSD at that time for the lack of an ethics training program, and that criticism was repeated in 1987 by the DOD IG. Again, in October of 1987, the OGE noted a failure of the OSD to monitor incoming and outgoing employees for purposes of training, and both Senator Cohen and I have asked questions about this this afternoon.

Obviously, you have got to know who it is that is coming in and leaving if you are going to have this kind of training. You are not regularly informed, as I understand it.

Ms. BUCK. I believe we are regularly informed.

Senator LEVIN. You are now regularly informed?

Ms. BUCK. Yes, sir.

Senator LEVIN. And when did this take place?

Ms. BUCK. We have had some meetings and I think worked out most of our problems with the Personnel Office, so that we can make sure that we are getting everyone who is coming in and leaving.

Senator LEVIN. And that is now in place?

Ms. BUCK. Yes.

Senator LEVIN. You are notified of all people coming in and leaving?

Ms. BUCK. Yes.

Senator LEVIN. So that you can now——

Ms. BUCK. We have had some problems in the past, but I think most of those problems have now been worked out.

Senator LEVIN. Yes, indeed you have for the last five years. But they have been worked out. When were they worked out? What meeting are you referring to?

Ms. BUCK. I think probably this year we finally believe that we have been able to work them out.

Senator LEVIN. Okay. And so now you are able to give that training and education?

Ms. BUCK. Yes.

Senator LEVIN. And do you?

Ms. BUCK. Yes, we do.

Senator LEVIN. So all incoming——

Ms. BUCK. In fact, we have—you talked about training programs.

Senator Levin. Now I am just talking about those specific people, incoming and leaving.

Ms. Buck. Yes. We give them in briefings and documents and——

Senator Levin. They are all covered now?

Ms. Buck [continuing]. We give them out briefings and documents. And in addition to that we provide counseling for individuals when they have specific questions. And of course, we provide legal opinions under section 2397b, if they request a legal opinion in writing, as well.

Senator Levin. I am not referring to the specific people who have problems or asking for legal opinions. I am just talking about, as a routine matter, all people coming in and leaving. You are notified about their comings and goings——

Ms. Buck. Yes.

Senator Levin [continuing]. Under this new system——

Ms. Buck. Yes.

Senator Levin. And they are given a specific training and education by you as to their conflict of interest or their revolving door duties?

Ms. Buck. Yes. That is——

Senator Levin. Okay.

Ms. Buck. Is that correct?

Senator Levin. That is fine.

Ms. Buck. Yes. I must say, as Mr. Ream pointed out, unless they quit and walk out the door without providing us with any time to do that.

Senator Levin. Okay. Do you know how many people are supposed to file that 1787 form?

Ms. Buck. Exactly how many people?

Senator Levin. About.

Ms. Buck. I think we must have in the thousands but I couldn't give you a specific number.

Senator Levin. A 1985 GAO report showed that only about 30 percent of those required to file reports on employment with contractors, which is the 1787 form, were actually doing so. In some of the services it was as low as 15 percent. Do you know what the percentage is now?

Ms. Buck. I don't know what the percentage is, but I will tell you that I am sure that not everyone is filing who should be filing. What we are doing about that is the following. Mr. Cohen had mentioned using computer matching programs in this. I think that could be really helpful, and in fact we have had I think some good substantive discussions with GAO on developing a computer program to do that.

We have some technical problems just in trying to match the individual forms against the contractor forms, so we may need your help, the congressional help, in making some fixes to the legislation to accomplish that.

In addition to that——

Senator Levin. Let me interrupt you there, if you would. In 1985, the GAO showed you how that list could be created.

Ms. Buck. Yes. Maybe Mr. Ream could respond because I never talked to GAO about that at all.

[Information submitted follows:]

The Standards of Conduct Office is in the process of implementing two separate computer matching projects to improve the compliance rate for the filing of the DD Form 1787, "Report of DoD and Defense Related Employment," required by 10 U.S.C. § 2397.

1. In 1985, the General Accounting Office (GAO) obtained a computer printout of all of the individuals who applied for Department of Defense security clearances in order to work for contractors doing annual DoD business of $10 million or more. This list was compared to a list of all individuals who left the Department and who had worked at the specified pay level. The names that were matched were called "potential non-filers." This list of potential non-filers was not usable by DoD ethics officials because there were several flaws in the methodology. One defect was a lack of addresses. There were neither business nor home addresses or other identifying information by which the individuals could be contacted. In the years since that original matching of FY 1983 reports was done by GAO, the DoD Standards of Conduct Office has worked closely with the GAO to overcome these deficiencies in order to generate a useful list of potential non-filers. We are on the verge of constructing such a list and will contact the people on the list as soon as it is made available to us.

2. The underlying statute for the DD Form 1787 program is 10 U.S.C. 2397. There is a separate statute, 10 U.S.C. 2397c, that requires that all $10 million/year defense contractors file information regarding those individuals who work for them who left DoD within the past two years. If the statutes were to be amended so that the names of the people who file individual DD Forms 1787 corresponded to the people who should be named in the reports done by the defense contractors, then a computer match would be possible and potential non-filers found. Unfortunately, the statutes were passed at different times and are inconsistent. The DoD Standards of Conduct Office has drafted amendments to the statutes to make them consistent so that the reporting lists will match. If the statutes are harmonized, a very useful tool will be available to increase compliance with both 10 U.S.C. 2397 and 10 U.S.C. 2397c and to facilitate enforcement action against those who may fail to file.

Mr. REAM. Yes. GAO presently has some people that were working with us on that. It involves working with the people that keep track of applicants for security clearances and matching that list with the list of the contractors in the $100 million price range whose employees are subject to the reporting requirement.

We have also met with our automation people to set up the program to accomplish it. It is not yet in place but we think that ultimately we will have quite an accurate list of who the probable filers are.

Senator LEVIN. How ultimately?

Mr. REAM. Well, I would think within the next several months.

Senator LEVIN. What was wrong with the 1985 recommendation of the GAO as to how to create the list?

Mr. REAM. Well, we didn't have the records of the security applicants automated. We had to do manual checks and we just didn't—it was very labor intensive and we weren't prepared to do that.

Senator LEVIN. So all you will cover are people who are applying for security clearances?

Mr. REAM. That is right.

Senator LEVIN. And what about people who aren't applying for clearance?

Mr. REAM. We tried to reach those in 1986, shortly after the reporting law was changed. We sent out 23,000 letters to every person we could identify that had left any of the DOD components within the period covered by the new reporting requirement. That brought in quite a few reports, and we are looking at other ways that we can reach out and advise people that they are subject to the requirement.

Our best approach is to check people when they leave and find out if they know where they are going to work. If they are going to work with one of those contractors, we tell them at that time that they will have to file a report within 90 days of employment.

Senator LEVIN. What percentage of the people who have left since 1986 have filed those reports?

Mr. REAM. I don't know, sir. It is not a large percentage. We found that we received probably 2,000 reports covering the last reporting period, and many more people have left the Government than that would indicate. But we don't know yet, and maybe GAO will find out for us how many who should file are not filing.

Senator LEVIN. A system that you are now going to put in place will only be able to give us a list as it relates to people who are applying for security clearance, but it will not include other people who are working with defense contractors.

Mr. REAM. That is right. The problem we have, when people leave we don't usually know where they are going to work unless they tell us one way or another, and applying for the clearances is the only method we have come up with so far.

Ms. BUCK. I think one of the problems we have is just plain a lot of people don't know they are supposed to file these reports. So one of the measures that we need to take here is to do an overall education effort to alert them to this filing requirement. In that regard I have asked Judge Nebeker to work with us to develop a model training program on Form 1787 that we can use Department-wide to try to get our percentage of compliance up.

Senator LEVIN. Do you think that a company that employs somebody who does not comply with the Form 1787 requirement should be responsible in some way for that failure?

Ms. BUCK. I think that you should only do that if you are going to actually impose that as a requirement on the company. I mean, I would have trouble not imposing it as a requirement on the company and then holding them responsible because an individual failed to take that action. And I think you would have to have a notice provision to put them on notice.

Senator LEVIN. Don't all companies, most companies know about this requirement?

Ms. BUCK. Well, the companies know that they have their own filing requirements. I am sure that most of the larger defense contractors are also aware that individuals have it.

Senator LEVIN. Could we require companies through the contracts, for instance, to be responsible? Should we make them responsible for the failure of their employees to file this notice?

And there is a conflict of interest issue, so we have an ethics issue which is a very significant one. The question is, should there be a contract provision saying to the company "you are responsible; if any of your employees do not follow the law on this, we are going to hold you responsible". And what should the penalty be? Not a criminal penalty, obviously, but some kind of contractual penalty. Should we do that? Is that fair to do, to put that responsibility on a company?

Mr. REAM. Mr. Chairman, you have something quite close to that in the new reporting requirement that the contractors have. One that is in 10 U.S. Code 2397c. That requires them to identify all of the people that they have hired who have been out of the Defense Department less than two years, and there is a stiff administrative penalty if they fail to file an accurate report.

Most of them are meeting that requirement by going to their employees and asking for a copy of what the employee himself has filed.

Senator LEVIN. Why doesn't that then just give you a way to get the list?

Mr. REAM. The problem we have had is that this law and the individual reporting requirement were passed at different times. They cover different grade levels. One is on a fiscal year, one is on a calendar year. And there are several other inconsistencies. Those are the things that we have been drafting some legislative language with the House Armed Services Committee in order to bring those several reporting requirements into sync so we could do the computer match you were talking about.

Senator LEVIN. All right

Ms. BUCK. Yes. That was what I had alluded to earlier when we were discussing this.

Senator LEVIN. Once that wrinkle is ironed out it ought to be easy to find out everybody that owes us that form, is that it?

Mr. REAM. I believe it will. We will know who has to pay a penalty.

Senator LEVIN. Not just people who are asking for a security clearance then.

Ms. BUCK. It should be very helpful.

Senator LEVIN. And a lot broader than just people who are asking for a security clearance?

Ms. BUCK. Yes.

Senator LEVIN. What do yo do with those forms when you get them? Who is reviewing those forms? Whose responsibility?

Ms. BUCK. The lawyers generally review those forms in the various components.

Senator LEVIN. In whose office? Your office?

Ms. BUCK. Well, in my office it would be my lawyers for the Office of the Secretary of Defense, but if you took like the Navy, it would be the Office of General Counsel.

Senator LEVIN. And do they do it?

Ms. BUCK. Yes, sir, they do.

Senator LEVIN. Routinely they look at all of the forms?

Ms. BUCK. They do it routinely.

Senator LEVIN. Okay. According to DOD regulations, consultants are supposed to file public financial disclosure statements after working 60 days at the GS–16 pay level. Does anyone in the Standards of Conduct Office or elsewhere keep track of the number of days that consultants work? And, if not, how do you know when they need to file?

Ms. BUCK. It wouldn't be the Standards of Conduct Office that would be in a position to watch those records. It would be the Personnel Office, and then the office that has hired the consultant.

Senator LEVIN. Do they keep track of it?

Ms. BUCK. They would keep track. They must keep track for pay purposes, for example.

Senator **Levin**. Then when people work over 60 days, then is somebody notified that they have done so, they have passed that threshold, so that then you know that they are supposed to file a public financial disclosure statement?

Mr. **Ream**. The people that keep the time cards for those consultants keep track of it, and as far as I know, at least in OSD, they are notifying us when individuals go over the 60 days. We usually hear from the individual complaining about having to file another report because each of those persons has filed a confidential report at the time they were appointed.

We do have a number of consultants, though, that don't come under the public reporting requirement because they serve without compensation or they serve at a grade level or pay level that is below one that puts them into the public reporting requirement after 60 days.

Senator **Levin**. Do you know whether or not the other components have that automatic notice once the 60-day threshold has been passed?

Mr. **Ream**. I don't know. We would have to inquire of them, Mr. Chairman.

Senator **Levin**. Would you check that out for us?

[Information submitted follows:]

At the Office of the Secretary of Defense every effort is made to insure that any consultants who serve OSD for pay above the threshold level for more than 60 days are notified that they must file SF 278, "Executive Personnel Financial Disclosure Report." This has proven difficult because consultants generally do not work on Department of Defense premises and may report their time sporadically. The people who keep the time cards for these individuals keep track of the number of days the consultant has worked and inform the individual when the requirement to file the SF 278 comes into effect. The standards of Conduct Office is notified of the names of consultants who pass the 60 days threshold. The system is not perfect, but usually works.

It is important to note that before a consultant may begin work for the Department of Defense a financial disclosure report must be filed. This is the DD Form 1555, "Confidential Statement of Affiliations and Financial Interests." Although not as detailed as the SF 278, it does provide the essential information needed to determine an individual consultant's financial interests before assigning work to that person. Thus, even if there are delays in receipt of the SF 278, there still is an adequate record of the individual's financial interests.

Each Department of Defense Component is responsible for creating its own mechanism for tracking consultant filing of financial reports.

In response to the concerns expressed by this subcommittee, a memorandum will be sent to each Component General Counsel and Military Department Judge advocate General regarding this matter. Those officers will be reminded of the need for education and training. Copies of the OSD Entrance and Exit Packages will be provided as models. They will be reminded of the need to track consultants so that if a consultant works for more than 60 days then he or she will file the SF 278. The memorandum will request each Component to describe the tracking mechanism presently in place. I will forward a copy of this memorandum and the responses it generates as soon as possible to answer the chairman's question.

Senator **Levin**. While we are on the subject of consultants, Ms. Buck, at a hearing in the Armed Services Committee several months ago you and I disagreed over the extent to which financial disclosure requirements even apply to consultants. I think at that time you said that all DOD consultants were treated as special government employees and therefore were required to file, and I argued that many consultants were, in fact, contractors and not special government employees and you disagreed.

Ms. **Buck**. Yes, sir. I think we were having a discussion in part over semantics.

Senator **Levin**. But have we not laid that issue to rest by concluding that in fact many consultants, perhaps most consultants, are contractors and are not required to file financial disclosure statements?

Ms. **Buck**. There are some contractors who are consultants or companies. Let's take XYZ Corporation. Under our current Federal Acquisition Regulations the contracting officer that is handling the contract is supposed to look at organizational conflicts of interest which is one aspect of the conflict of interest businesses that I think you were getting at there.

We have a current FAR provision that requires the contracting officers, to look at organizational conflicts.

Senator **Levin**. I am talking about mandatory filing.

Ms. **Buck**. But there isn't a uniform form that is filled out by all of those contractors, I believe. Is that correct?

Senator **Levin**. That is the issue.

Ms. **Buck**. Yes. I do not believe—so you have special government employees——

Senator **Levin**. But, if they were special government employees, they would have to file it?

Ms. **Buck**. If they were individuals, then they would be filling out Form 1555. But otherwise, you get into the contract situation and organizational conflicts of interest are supposed to be looked at under our current regulations.

Senator **Levin**. Are you saying that every individual who is a consultant, who is not incorporated——

Ms. **Buck**. Is not what? I am sorry.

Senator **Levin**. Who is not incorporated. You are saying every individual who is under contract with the Department of Defense is a special government employee?

Ms. **Buck**. I believe that all of our individuals would be filling out Forms 1555. Wouldn't they, Dave? They should be.

Senator **Levin**. They are. So where you and I have a semantic problem——

Ms. **Buck**. I think it is when you get into the companies.

Senator **Levin** [continuing]. Is when you get into a corporation. Let's not say company. Let's say corporation.

Ms. **Buck**. Right. And I am concerned there. After we had had that discussion I went back and I got together with our Ethics Committee so that we could talk about that issue, and I believe that there are some problems uniformity. And I think one way of changing that is to mandate a change through our Standards of Conduct Directive, and we can even do that in the next revision that we are making that will also pick up the particular issue that you raised earlier.

Senator **Levin**. When are those going to be forthcoming? Because we, frankly, get very discouraged at the lack of progress that we see. You see it from the perspective, of course, that you are making progress. We see the lack of progress and that is our perspective. When will those modifications be forthcoming?

Ms. **Buck**. I would hesitate to give you a very specific time frame other than the next few months.

Senator LEVIN. Within the next 2 months?

Ms. BUCK. Within the next few months.

Senator LEVIN. They will be published?

Ms. BUCK. They would be published. Yes. They would be published. We would publish them for public comment generally. And we also circulate them within the military departments and the other defense agencies to that they can comment on them as well.

Senator LEVIN. We are not able to compare the DOD ethics enforcement to other agencies in the Federal Government. That is not what we have been looking at. We have been looking at ethics enforcement in the DOD. We have seen many shortcomings, which we pointed out to you. Yesterday, I was at a hearing, may I tell you, in a different committee where we saw some significant shortcomings on the procurement side of DOD. I have got to tell you when you are in the midst all of the outside evidence of procurement and ethical lapses if it is discouraging. And I think you can appreciate why it is discouraging to us.

We are in charge here of trying to put some "oomph" behind ethics enforcement and, if necessary, put more teeth in our ethics law. And then when we see the 1983 reports, 1985 report, 1987 reports from the IG or from the OGE which have not been followed, and then we see ethics scandal, we say what is the connection between the failure to really have some vigor and aggressive and assertive enforcement of ethics laws and the fact that we see the shortfalls out there.

Ms. BUCK. But the Office of Government Ethics did indicate today that they though that we were doing better than other agencies. I am troubled——

Senator LEVIN. That is why I am saying I can't compare it. When I pressed them on that issue they weren't very specific about that and said, well, they couldn't generalize about other agencies. So I am not going to generalize about other agencies either. I am going to leave that for someone else. Perhaps you. But that doesn't make me feel good.

Ms. BUCK. I would also like to add another comment, Senator, and it is something that has bothered me for some time over the last several months, and that is, it seems to me that the Department of Defense has been singled out for conflict of interest scrutiny and scrutiny in a number of other areas. I think that is fundamentally unfair. I am one of the most ardent advocates, I believe, on conflict of interest within the Federal Government, but I believe that whatever standards are applied, and this is my personal opinion, should be applied across the board.

I think that the people in DOD are very willing to live up to the highest standards, but I think it is very troubling and unfair to them to single them out when other agencies are engaged in the same type of procurement activities that we do, and moreover, the Congress itself is intimately involved in the acquisition process.

Senator LEVIN. Why haven't we seen the scandals in the other agencies?

Ms. BUCK. There are scandals in the other agencies. I think you should ask for Department of Justice statistics on cases——

Senator LEVIN. You are saying that we have had as extensive a problem?

Ms. **Buck**. I think that you should talk to the Criminal Division and ask them for their statistics on ethics problems throughout the Federal Government.

Senator **Levin**. Have you?

Ms. **Buck**. I have heard their testimony before on that subject.

Senator **Levin**. And they say that——

Ms. **Buck**. And there are problems in other agencies.

Senator **Levin**. You are saying that other agencies have had the same degree of problems as the Department of Defense?

Ms. **Buck**. Well, the Department of Defense is a very large agency and to you have to look at it from a proportional standpoint as well.

Senator **Levin**. I agree with you. But has the Department of Justice told you that the other agencies have proportionately got the same problem?

Ms. **Buck**. I don't know if it is on strict proportional grounds. I am just saying——

Senator **Levin**. Then why do you feel you have been singled out if you haven't checked that out?

Ms. **Buck**. Because the other agencies have problems, too.

Senator **Levin**. You haven't checked out, but you want me to check out—and I would be happy to do it. Why do you then feel singled out?

Ms. **Buck**. Because I think that we have seen legislation in recent years directed specifically at DOD without any rational basis.

Senator **Levin**. Such as?

Ms. **Buck**. Well, section 2397b, which is geared specifically to DOD when other Federal agencies engage in exactly the same type of procurement activities.

Senator **Levin**. And what is that particular provision?

Ms. **Buck**. Well, this is on people who are negotiating a contract or claim with a contractor and then wish to go to work for that particular contractor, and they are prohibited from working——

Senator **Levin**. And you are saying that other agencies have the same——

Ms. **Buck**. Of course.

Senator **Levin** [continuing]. Revolving door? No, no.

Ms. **Buck**. Of course.

Senator **Levin**. The other agencies have a revolving door problem to the same degree as the Department?

Ms. **Buck**. Well, I don't know.

Senator **Levin**. Well, that is important.

Ms. **Buck**. But I think that the same standards should apply.

Senator **Levin**. That is important. While, I agree with you, that is not the problem.

Ms. **Buck**. And when you write laws——

Senator **Levin**. Let me just ask you a blunt question. You think other agencies have the same revolving door problem as the Department of Defense?

Ms. **Buck**. I would think that—I would think that they do have problems. I mean, they have people working for them.

Senator **Levin**. People don't retire after 20 years in the other agencies.

Ms. BUCK. Pardon?

Senator LEVIN. You don't have the same problem. You don't have the same retirement problem, where huge quantities of people retire——

Ms. BUCK. Oh, well, with the——

Senator LEVIN [continuing]. After 20 years.

Ms. BUCK. You mean with the military.

Senator LEVIN. Yes.

Ms. BUCK. I just think that they have problems, too, and I believe that the way that the laws should be drafted should be on a fairness standard.

Senator LEVIN. Well, I generally agree with that. But, of course, we have had a different problem in the DOD with revolving doors than we do in other agencies. But in general I agree with your point; we ought to apply the same standard.

That is why we were so insistent that you adopt the same standard as other agencies when it comes to the question of a particular matter. You adopted a lesser standard. You, DOD, adopted a lesser standard for DOD than all of the other agencies have adopted, and I am trying to figure out why.

Ms. BUCK. I think we are changing that.

Senator LEVIN. And your answer is you will correct it. But I don't know why it was in your Standards of Conduct at a lesser level to begin with. There must have been some——

Ms. BUCK. Well, as you know, we lawyers can have disagreements on a number of legal issues from time to time.

Senator LEVIN. But it wasn't coincidental. Somebody argued that you should have a lesser standard and not include rulemaking. So that we got a conscious decision that you wanted to permit conduct which in other agencies would be criminal. And that is the reason we have made such a point out of this this afternoon.

So you are reversing it and saying, well, maybe we ought to apply the other revolving door standards to other agencies. And maybe we should, and I would be happy to look into that. But before you reached the singling-out conclusion I would hope that you would check with the Department of Justice and see whether or not there is the same problem in those other agencies. Because then you would have a better point it would seem to me, better evidence for your feeling that you have been singled out.

I don't think you have been. But, if you have been, we ought to correct it. I couldn't agree with you more. But I will check with the Department of Justice, and I hope you would, in terms of their statistics. I will share them with you because they may or may not support your feeling. But before you jump to that conclusion you really should check out with the Department of Justice to see if there is a factual basis.

Ms. BUCK. Well, I have heard the Department of Justice testify on this subject before.

Senator LEVIN. That other agencies have problems. That is not the issue. The issue is, proportionately, whether there a greater problem in DOD. You don't have the figures, nor do I.

Well, I am glad you at least shared your feeling because we should make sure we don't single out any agency. I think all agencies which appear in front of us probably feel that the spotlight is on them; and we have other agencies, let me assure you. EPA has felt very much singled out over the years and people try to reassure them they are not being singled out except when massive problems appear. Then they are called up for some kind of oversight and accounting, and that is what we are here for.

In any event, we thank you for coming on relatively short notice. It is an important hearing because ethics are important to this Committee, and we hope to the Congress. We believe it is important to the country. We are grateful for all of you to be here today.

Ms. **Buck**. Thank you.

[Whereupon, at 4:24 p.m., the Subcommittee was adjourned to reconvene subject to the call of the Chair.]

APPENDIX

STATEMENT BY

DEREK J. VANDER SCHAAF, DEPUTY INSPECTOR GENERAL

DEPARTMENT OF DEFENSE

Mr. Chairman and Members of the Subcommittee:

I am pleased to participate in today's hearing on the Department of Defense ethics program. I will attempt to address each of the areas mentioned in your invitation letter.

The Department of Defense has stewardship over huge amounts of property and equipment purchased with taxpayer dollars. The Department spends roughly $300 billion of public funds annually and employs nearly 3 million civil servants and military personnel. Fortunately, the typical DoD civilian or military employee is honest, anxious to comply with all laws and regulations, especially those pertaining to personal ethics, and very intolerant of those who would resort to unethical behavior. Nevertheless, the size, dispersion and complexity of DoD operations create real challenges in terms of maintaining an agency ethics program with real impact.

I strongly support vigorous management action in this area. A highly visible agency ethics program is indispensable in preventing fraud and waste, as well as in detecting such activity. The Subcommittee's interest in this DoD management area is both appropriate and timely.

ELEMENTS OF AN EFFECTIVE PROGRAM

1. Sound Underlying Laws

The first ingredient to a successful agency ethics program is a sound body of laws and regulations to define acceptable parameters of behavior, rules and goals. The Executive Branch and the Congress share the responsibility for formulating legislation in this area, and of course the Congress determines what is enacted into law.

Congress has recently enacted 10 U.S.C. 2397, referred to as the "revolving door" legislation. The Office of Inspector General has testified before various Congressional Committees and endorsed this legislation. Although we have a few currently ongoing investigations pursuant to this statute, our experience in operating under it is still rather limited. Some clarifications are being discussed by DoD General Counsel with the House Armed Services Committee.

In general, I think that the rules governing ethics for government officials are sound and we should expect full observance by all employees.

2. Training

The second element to a successful ethics program is a thorough training effort. Simply stated, people cannot be expected to comply with rules that they know little about and do not fully understand. In the DoD, the task of providing effective ethics training is especially difficult because of the large number of employees, their very diverse grade levels and occupational specialities, and their geographical dispersion. As in all Agencies, there are also impediments such as a mindset that senior officials do not need such "elementary" training and a tendency to reduce ethics instructions to mere "how to" sessions on filling out forms and complying with paperwork requirements. When organizations are understaffed or when training dollars are short, I am afraid there would be strong tendency among managers to dispense with education on topics like ethics, under the misguided rationale that there is no immediate, visible benefit from such training in terms of improved job performance.

As you know, Mr. Chairman, the Secretary of Defense appointed a task force led by the Under Secretary of Defense for Acquisition and the General Counsel to study the ramifications of the recent disclosures of improper conduct by DoD acquisition personnel and contractors. The task force is chartered with determining what actions are required to prevent the reoccurrence of such problems. The Inspector General, June Gibbs Brown, has formally recommended to the task force that more be done in terms of ethics training. Specifically, she has recommended the following:

o Department-wide Mandatory Ethics Training

Establish a system of annual, mandatory ethics briefings for all DoD personnel similar to the current annual security briefings. Although DoD investigators have provided fraud awareness training to many personnel over the past five years, all employees and particularly those involved in the procurement system, should be reached with broader, mandatory, regularly scheduled ethics awareness briefings. The sessions would not provide overly detailed information, but would be aimed at increasing employee awareness of the Standards of Conduct and indicators of the problems that Federal employees most frequently encounter.

- Special Briefings for Key Officials

  Present special briefings to presidential appointees, senior executives, program managers, and other senior staff, both when they enter and leave Government service. Although those individuals may have some general knowledge of the Government ethics laws and regulations, they may never have had a comprehensive presentation on applying the Standards of Conduct to their duties or to the duties of the employees they supervise.

- Ethics Training in Defense and Service Schools

  Earlier this year we conducted a survey to determine if the major defense and Service schools include courses on such topics as fraud awareness, the Standards of Conduct, and internal management controls in their curricula. Of the twenty-six schools that responded to the survey, eighteen said they covered fraud awareness and the Standards of Conduct, but in most cases it was unclear if such issues were formally structured into their courses. The survey results pointed to a perception on the part of the school faculties that there was no need for such information to be presented explicitly and formally to DoD managers. The IG believes there is such a need.

While ethics and standards of conduct training may not deter an individual who is of criminal bent, it will prevent other individuals from becoming unwitting dupes and will increase the chances of criminal activity being detected and reported. It will also prevent perfectly honest people from committing improprieties simply because they did not understand what is not allowable behavior for Federal employees.

Before leaving this matter, Mr. Chairman, I want to mention some of the activities which the Office of the Inspector General has undertaken to assist the Department in the training effort. First, various publications have been produced by my office and disseminated in large numbers throughout the DoD over the past few years. They include the following:

-- "Indicators of Fraud in Procurement," June 1987. Chapter 9 discusses integrity awareness. It informs procurement personnel about their responsibilities to be alert for bribe offers, to avoid the acceptance of gratuities and to recognize conflict of interest.

-- "Acquisition Alerts for Program Managers," originally published in 1984 and republished in 1987. Among other subjects, it covers ethical standards, including rules on gratuities and commercial travel benefits. Fifteen thousand copies have been distributed.

-- "Integrity Alerts...Common Pitfalls and Everyday Ethics," October 1986. Now in its fourth printing, this booklet addresses a series of common standards of conduct questions and situations.

-- "Compendium of Publications on Fraud, Waste and Abuse Indicators," June 30, 1988. Our office took the lead in compiling and publishing this booklet. It lists informational materials from 18 Federal agencies, highlighting data related to indicators of fraud, waste, abuse and mismanagement.

-- "How to Keep Out of Trouble," March 1986. Our office published this compilation of standards of conduct reminders in concert with the Office of Government Ethics.

I have brought a few copies of each of them with me today for your information. We are currently working on an additional pamphlet which will be especially geared toward useful ethics information for officials leaving and entering the DoD during the transition period.

In addition, the Inspector General has recommended that the President's Council on Integrity and Efficiency sponsor the development of special orientation briefings for incoming senior personnel of the next Administration.

One of the early initiatives of the Office of the Inspector General after its establishment was a drastic expansion of fraud awareness training throughout the DoD. We have now provided such training to over 250,000 individuals. While that training is not ethics training per se, it is closely related and does sensitize individuals to what are norms of behavior.

Finally, the Assistant Secretary of Defense (Production and Logistics) has requested our assistance in providing an ethics awareness training session for procurement personnel in the Office of the Secretary of Defense. We support all such initiatives, and are working with the Assistant Secretary's staff on that particular effort.

We intend to continue our participation in DoD ethics training efforts and, as previously mentioned, we hope to see the Department do more in the future.

3. Reinforcement

The third element of a successful program is periodic reinforcement in the employee's mind of the continuing need for ethics awareness. Years ago, the DoD realized that an individual's security awareness tends to fade if not periodically refreshed. Annual security briefings were made mandatory. We see a close parallel between security awareness and standards of conduct awareness. Ms. Brown's recommendation to the Task Force is therefore for annual, mandatory briefings--not a one time shot.

Posters, articles in publications widely read by employees, discussion at command conferences, and various other techniques can also be used to foster continuing awareness.

If well managed, the costs of these proactive efforts can be kept relatively minor.

4. Enforcement

Lastly, an effective ethics program must have good enforcement mechanisms. For example, adequate staffing must be provided to review financial disclosure statements and required post employment disclosure statements in depth, not just to collect them. Management must move decisively to punish those who violate the standards of conduct and ethics laws.

The audit, inspection and investigative resources of the DoD are powerful tools for detecting and reacting to improper conduct. We can also assist in field verification of disclosure statements. The DoD Hotline and my Special Inquiries staff provide additional special capabilities respectively for detecting and investigating allegations of improprieties by DoD officials.

The DoD Hotline opens about 1,200 cases each year based on information provided by DoD and contract personnel, Members of Congress and the general public. Roughly 12 percent of those cases fit into the area of ethics or standards of conduct. I should make it clear that the DoD Standards of Conduct Directive (DoDD 5500.7) covers a broad range of ethical issues. Among the topics covered are:

-- using inside information for personal advantage;

-- gifts from subordinates;

--soliciting employment with DoD contractors;

-- abuse of authority;

-- accepting gratuities;

-- outside employment incompatable with Government duties;

-- use of government resources for unofficial purposes, especially to benefit a private party;

-- reporting financial interests.

The IG, DoD, pursues both criminal and administrative sanctions in these cases, although we find that the administrative sanctions are often the most effective. When an allegation is substantiated, and of course not all allegations are substantiated, we make recommendations to the appropriate DoD officials and we follow the cases to ensure that adequate corrective action is taken.

Revolving door allegations under the old law were difficult to substantiate because of the limited coverage and difficulties in proof. We expect that our experience will be better under 10 U.S.C. 2397b, but the law is too recent for us to have any significant experience.

We have investigated a number of abuse of authority cases, such as improper use of government aircraft, excessive modifications to senior officer quarters, and use of government personnel to perform personal duties. We also have some experience in cases of where government personnel pursued personal business ventures with government resources. Gratuities and sexual harassment cases have also been pursued as ethics issues. Our statistics are not very well refined because of the diversity of ethical issues, but I can say emphatically that we vigorously investigate every allegation of misconduct, without regard to rank, grade or position.

We have issued hundreds of Special Inquiries reports. They are not widely disseminated, for obvious personal privacy reasons. We do send the reports to the appropriate management officials for appropriate corrective action, including discipline.

RESULTS OF IG REVIEWS

Mr. Chairman, your invitation letter to the Inspector General requested that we summarize for you our reviews of various aspects of the DoD ethics program. My office has conducted several audits of the program, and we track management's followup actions on both our reports and on those of the General Accounting Office.

FINANCIAL DISCLOSURE STATEMENTS

In 1984 my audit staff evaluated DoD compliance with the financial disclosure provisions of the Ethics in Government Act of 1978 and the DoD guidance on standards of conduct. Those regulations required systematic reviews of the financial interests of current and prospective Government employees to determine potential conflicts of interest. We examined 1,256 procurement positions whose incumbents were required to file DD Form 1555 to see if they had done so. The audit showed that, in most cases, ethics counselors did a good job reviewing the disclosure statements they received; however, many DoD components were neither adequately identifying which personnel were required to file disclosure statements nor monitoring disclosure statement processing. We determined that 89 employees had not filed statements even though their position descriptions required them to do so. Another 86 employees had not filed because their position descriptions failed to include financial disclosure filing requirements. Nearly 71 percent of 230 newly appointed personnel reviewed had not submitted their initial disclosure statements for up to 11 months after commencing their service. These conditions occurred because DoD guidance on financial disclosure policies, procedures, and responsibilities was not comprehensive or definitive. In many cases, neither supervisors nor ethics counselors were ensuring that all program requirements were met. As a result, financial disclosure programs within the Defense components were inconsistently implemented and did not ensure that all potential conflicts of interest were identified. We recommended revision of the DoD Standards of Conduct directive to clarify procedures, improve internal controls, assign specific responsibility, clarify filing criteria and incorporate Federal Personnel Manual and Ethics in Government Act provisions. We also recommend that ethics counselors review all official position descriptions and ensure that financial disclosure statements are on file for incumbents of positions that require disclosure statements.

In an inspection of the Defense Communications Agency in 1986, we found that many agency personnel who should have filed DD Form 1555 had not done so.

POST EMPLOYMENT REPORTING

The GAO has issued a series of reports since 1985 on DoD post-employment reporting policies and procedures. The 1986 report, which examined the degree of compliance by former DoD employees with the reporting requirements of Title 10 U.S.C. 2397 (post employment with major Defense contractors), was the most significant of those. The GAO found that the law exempted over half of former DoD personnel working in Defense-related areas from reporting. (Subsequent amendments to the statute expanded coverage.) The GAO also found that only 30 percent of those ex-employees required to report did so. The audit also concluded that the post-employment disclosure forms provided insufficient information and were not reviewed adequately by the DoD. The GAO recommended that DoD components periodically inform former DoD employees of reporting requirements and recommended improvements to the reporting formats and review procedures.

The Inspector General, DoD, has consistently supported effective and balanced revolving door controls. For example, on October 8, 1985, I testified before the Subcommittee on Investigations, House Committee on Post Office and Civil Service, regarding the revolving door legislation proposed for the Department of Defense FY 1986 Authorization Act. I supported the legislation and recommended several enhancements. My suggestions included:

-- requiring a specific cooling-off period between the time an employee stops exercising procurement responsibility for the Government and begins working for a Government contractor.

-- imposing contractual sanctions on contractors for violations (in addition to any criminal penalties).

-- making the revolving door laws applicable to all branches of the Federal Government.

On January 29, 1986, I testified on revolving door legislation before the Subcommittee on Administrative Law and Government Relations, House Committee on the Judiciary. This testimony addressed H.R. 2554, the Defense Procurement Conflict of Interest Act, which was later passed and codified in U.S.C., Title 10, section 2397. I was particularly pleased with this bill since it addressed several concerns I had raised with the revolving door provisions of the FY 1986 Defense Authorization Act.

I believe DoD has appropriately responded to the requirements of U.S.C., Title 10, section 2397. The statutory provisions were incorporated into a regulation that was given wide distribution in March 1987. Subsequently, the revolving door restrictions were incorporated in DoD Directive 5500.7, "Standards of Conduct."

Because of the short time since these directives were issued we have not performed full scale audits or inspections covering their implementation. However, we do have some insight into the success of implementation through the efforts of our Special Programs unit (includes Special Inquiries and the Hotline).

Our Director for Special Programs states there is evidence that the DoD work force is sensitized to the new revolving door restrictions. When workers encounter a former boss or colleague working for a contractor in any type of questionable arrangement, there is an increasing tendency for them to bring the case to one of our investigative units. During the past two years we have seen growth in the number of special projects cases involving revolving door issues. In that time period, we estimate we have investigated 55 conflict of interest cases, some of which involve revolving door issues. Several cases are currently under investigation. Many cases do not ultimately disclose any wrongdoing, but this workload does show the DoD workforce is alert to this area.

Mr. Chairman, I would like to mention one significant piece of legislation now being considered in the House--a Bill, "To Amend Title 10, United States Code, to Strengthen Conflict-Of-Interest Restrictions Relating to Defense Procurement."

The H.R. 4956 provides some excellent changes in the current provisions relating to the problems in conflicts-in-interest and post employment. While I generally support the Bill, I believe that two significant changes should be made to clarify its intent and protect the interest of the Department of Defense. The changes are:

1. Section (c) states that the Secretary of Defense shall provide certain notice to persons separating from the Department in a position described as covered by the provisions of the Bill. Such notice is viewed as a positive step in attempting to prevent prohibited conflict-in-interest situations. However, failure by the Department to provide a departing employee with such notice, whether as a result of administrative oversight or mistake in facts and application of law, should not be viewed as providing a defense to the employee who subsequently violated the provision of the law.

Each departmental employee terminating his employment has an individual obligation to understand the restrictions that apply to his post-employment and should be held accountable for any violations of the law. We recommend that paragraph (c) be changed to include a subparagraph (2) providing that, "Failure by the Secretary of Defense to provide notice as called for in paragraph (1) shall not be construed in any way to relieve an individual of the prohibitions and penalties provided for in this section."

2. Section (a)(4) provides that, "Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18." (Maximum of $250,000.) Similarly, section (a)(5) provides a like penalty for any person who knowingly offers or provides any compensation to another person in violation of paragraph (a)(1). (Maximum of $500,000 for a corporation.)

While the addition of a criminal penalty for violations of this section is a positive step, the effect of the amendment is to eliminate the prior civil penalties of $250,000 and $500,000 which could be assessed for the same violation(s). Changing the penalty provision from civil to criminal also changes the burden of proof need to provide a violation from "preponderance of evidence" to "beyond a reasonable doubt."

We have recommended that H.R. 4956 be amended as follows:

a. Paragraph (1)(4) should be changed to read: "Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a civil fine, in an amount not to exceed $250,000 in a civil action brought by the United States in the appropriate district court of the United States.

b. Similarly, paragraph (a)(5) should be changed to read: "Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine, in an amount not to exceed $500,000 in a civil action brought by the United States."

Should those changes not be adopted by the House, I would request the Senate to consider them.

STANDARDS OF CONDUCT

The DoD IG has issued various reports since 1984 covering various aspects of DoD employee standards of conduct. The key report among those, issued in 1987 by my Criminal Investigations Policy and Oversight staff, reviewed gratuities and standards of conduct related to DoD procurement. It was found that, while the DoD has historically operated a relatively effective Standards of Conduct program, changes in legislation and lessons learned from recent experiences had created a need for updating and improving the program. To eliminate confusion regarding the kinds of gratuities that can be offered and accepted by DoD employees, it was recommended that the DoD Standards of Conduct Directive be amended: (1) to encourage that all requests for advisory opinions (and opinions of ethics officials) on conflict of interest and post-employment issues be rendered in writing and reviewed by senior DoD officials; (2) to address properly the problem of gratuities from contractors; (3) to clearly state the prohibition of payment of honoraria by DoD contractors to DoD employees; and (4) to require the Office of General Counsel, DoD, to assume responsibility for the development of a complete ethics program within DoD.

DOD CORRECTIVE ACTION: REVISION OF DOD STANDARDS OF CONDUCT DIRECTIVE

A revised and strengthened version of DoD Directive 5500.7, "Standards of Conduct" was issued in May 1987 by the Deputy Secretary of Defense. It responded to those deficiencies reported in the areas of financial disclosure, post-employment reporting and standards of conduct for procurement personnel. The Directive provided 84 pages of detailed guidance implementing the Ethics in Government Act of 1978, more recent revolving door legislation, and DoD IG and GAO audit recommendations. The Directive prescribed standards of conduct for all DoD personnel, regardless of assignment. It established criteria and procedures for submission and review of reports required of certain former and retired military officers, plus former DoD civilian officers and employees who are presently employed by Defense contractors, and former officers and employees of Defense contractors presently employed by the DoD. The Directive also required ethics officials to initiate and maintain an education and training program concerning reporting requirements. It established the DoD Standards of Conduct Office, which is responsible for a greatly expanded and coordinated DoD ethics program. In addition, a DoD Ethics Oversight Committee was established to improve uniformity in DoD component programs.

While these changes have improved the ethics program, there remains one concern regarding its implementation. Advisory opinions by ethics offices are rarely documented and as a result there is little or no review of the opinions by senior officials. The absence of written opinions also ensures that there is no effective mechanism for the reporting of opinions through channels to the DoD Standards of Conduct office so that selected opinions can then be disseminated throughout DoD to provide the much needed guidance on ethics issues.

I would suggest a more structured, better documented process. I would also like to note that some DoD components have individually developed excellent programs in dealing with Standards of Conduct issues. For example, I would point to the Army Materiel Command's absolute ban on the acceptance of gratuities and to the Air Force Systems Command's "Straight Arrow" program. I would like to see the DoD incorporate similar measures into the Department-wide program.

The Military Departments and other DoD components have designated ethics officials to oversee compliance with the DoD Directive. While the Office of General Counsel had approved the Services' implementing regulations, they had not yet been published and disseminated at the time of our last followup inquiry a few weeks ago. (The Army published a regulation which the DoD Office of General Counsel found to be incomplete. To our knowledge, the change has not been published.) The Inspector General wrote to the General Counsel urging that the Services be pressed to end the delays. We will continue following up on the matter to ensure that adequate implementing guidance is issued.

Without such formal guidance, there can be little assurance that the program is being implemented fully and uniformly at all headquarters, commands and installations.

DOD ADVISORY COMMITTEES

Over the years we and the GAO have identified numerous problems related to DoD compliance with the Federal Advisory Committee Act. Some of the deficiencies related to documentation of the reasons for selection of committee members and of the review of member financial disclosure statements so as to avoid potential conflicts of interest. We recommended the DoD implement actions to ensure financial disclosure statements are properly prepared and filed prior to the committee activation, and that a substantive review be conducted to avert even the appearance of conflict of interest. The GAO recommended documentation of the review of financial disclosure information and the steps for selecting individuals for panels.

We also recommended that guidance be issued to define "balanced representation" on an advisory committee. Moreover, we recommended that the Assistant Secretary of Defense (Comptroller) develop procedures for periodic evaluations of conflict of interest reviews and periodic checks of board operations to assure compliance with all applicable regulations.

In response to these reports, DoD has agreed to revise all policies and procedures to ensure compliance with legal requirements and to provide greater oversight of member selection and committee operations. The Deputy Assistant Secretary of Defense (Administration) indicated that a DoD program for periodic review of records of each advisory committee, to review each committee at least once every three years, would assure compliance with all rules and regulations. However, the GAO testified before your full Committee in April that DoD is still not adequately documenting the reasons for individual selection for advisory committee membership or the reviews of member financial disclosure statements. Guidance on what constitutes "balanced membership" is still needed. The GAO also reported slippage in the OSD oversight of committee operations. Regular reviews of committee operations declined from 25 in 1984 to 6 in 1987 with none thus far in 1988. The GAO found that DoD did not have a plan showing which advisory committees/panels will be reviewed in the future.

The DoD advised the GAO, in response to this testimony, that the Department would welcome improved guidance with respect to balanced membership criteria. The DoD agreed that immediate corrective action should be taken in instances where financial disclosure statements are not on record to prevent such future occurrences. The DoD announced in a memorandum to all components in May 1988 that management oversight would soon be intensified by increasing the periodic compliance reviews. Each advisory committee will now be reviewed at least once every three years. Maintenance of member financial disclosure statements will be one area included in the periodic committee reviews.

AUDIT WORK PLANNED AND IN PROGRESS

In July 1988, the GAO announced a review of DoD implementation of post-employment requirements. That audit will include followup on all prior reports related to the revolving door issue. My office had planned a similar audit; however, to avoid duplication we will defer our effort. We continue our followup tracking on previously agreed-upon actions which are not yet complete.

SUMMARY

Mr. Chairman, there is an old saying that soldiers are looked down upon until there happens to be a war. Ethics programs seldom get visibility or emphasis until there is a scandal. I hope that the current interest in strengthening the DoD ethics program is not merely a transitory reaction to the disclosures from the Ill Wind investigations. I know that is not the case with this particular Subcommittee, which has had a longstanding interest and great expertise in these matters. We are committed, in any event, to impressing all interested parties with the importance of sustained, vigorous effort in this area.

That concludes my statement.

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STATEMENT OF KATHLEEN A. BUCK
GENERAL COUNSEL, DEPARTMENT OF DEFENSE
TO THE SUBCOMMITTEE ON OVERSIGHT
OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

September 29, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I appreciate the opportunity you have given me to answer your questions concerning the management of the Standards of Conduct Program of the Department of Defense.

The Department of Defense has developed an aggressive Standards of Conduct Program designed to educate all its personnel about ethical requirements and their importance, to train all its Ethics advisors and keep them abreast of new developments, to investigate promptly allegations of impropriety, and to ensure proper enforcement in those cases where transgressions have occurred. In April of 1987 new statutes creating complex reporting requirements and post-employment restrictions became effective. These statutes applied only to the Department of Defense and its personnel, yet in the short time since their enactment, the Department has implemented them through changes to its own regulation, as well as those of its components and through changes to the Federal Acquisition Regulations. Absorbing all these changes has proven to be a gradual and time-consuming process but has not kept the Department from maintaining a vigorous program.

It may be helpful to give you a broad outline of the operation of the Department's Standards of Conduct program. Overall guidance comes from the Office of the Secretary of Defense; the General Counsel is the Designated Agency Ethics Official for OSD. Department-wide responsibilities of the General Counsel, working through the Assistant General Counsel (Legal Counsel) and his Standards of Conduct Office, include:

1. Publishing the DoD Standards of Conduct Directive (DoD Directive 5500.7, codified in 32 C.F.R. Part 40).

2. Representing the DoD on Department-wide concerns before the Office of Government Ethics.

3. Acting as focal point for legislative initiatives and responses on standards of conduct issues.

4. Presiding over Department-wide Ethics Oversight Committee that coordinates programs in the individual components to insure consistent interpretation and enforcement.

5. Managing post-DoD individual (DD Form 1787, required by 10 USC §2397) and corporate (10 USC §2397c) reporting programs.

The Office of General Counsel manages OSD's Ethics Program, performing functions similar to that of comparable offices in all of the other components. These activities include managing the dual financial disclosure reporting systems, the public reporting system required by the Ethics in Government Act of 1978 (SF 278) and the confidential reporting system established by Executive Order 11222 (DD Form 1555).

My office has principal responsibility for the DoD and Defense Related Employment System (10 USC §2397). These are the reports filed by individuals who come from industry into employment with the Department of Defense and those who leave DoD for employment with contractors doing annual DoD business of $10 million or more. We have sole responsibility for the Contractor Reporting System (10 USC §2397c). Contractors with $10 million in annual DoD business are required to report the names of all of the persons who have been employed by their organizations within 2 years of their departure from DoD. The report is intended to detect violations of 10 USC 2397b, a law limiting certain persons with procurement responsibilities from employment with those firms with which they had done business during their last 2 years of DoD service.

The first report under this new law was due April 1 of this year. With some statutory refinement of the reporting requirement, it may become a tool to identify persons failing to file under §2397. We are working with the House Armed Services Committee to develop the necessary statutory language to make these several complex reporting laws compatible, but this probably will not be concluded in the waning days of this legislative session.

With over three million officers and employees, the Department necessarily operates in a decentralized manner to the extent possible. Each of the components, i.e., the Departments of the Army, Navy and Air Force, and the Defense Agencies, operates its own Standards of Conduct Program under the direction of its Designated Agency Ethics Official, reporting to the Director of the Office of Government Ethics with guidance from my office.

The Standards of Conduct Office in the Office of the Secretary of Defense and the comparable offices of the individual components carry out similar programs to enhance compliance with the regulations.

Among the educational approaches are the individual briefings given to persons newly appointed or hired and those who are preparing to depart. The rules are explained, and copies of regulations and explanatory materials are provided. Questions are answered. Because the most useful educational technique is individual counseling, people are encouraged to bring their questions to their ethics counselors. Counseling is available to current and former personnel. Inquiries from industry, news media and public on all ethics topics are welcomed. Ethics advisors field large numbers of questions from all of these sources.

To the extent practicable, opinions are given in writing. Some situations require written replies. For example, §2397b of title 10, United States Code (effective April 16, 1987), requires Agency Ethics Officials, upon request, to provide written opinions to departing personnel outlining the scope of restrictions under this law. Because of the large penalties for violation of §2397b (up to $500,000 for the employer and $250,000 for the employee), defense contractors require that prospective employees who are leaving DoD show these letters at the time of their interviews, whether or not the former DoD members have been involved in procurement. This practice results in a large volume of written opinions by ethics officers.

This is not the place to detail all of the educational efforts that are made in support of ethical practice. A variety of other means are employed by the components to explain the standards of conduct rules. These include command assemblies, movies, newsletters, posters, and other techniques. The goal of all of these programs is to inculcate the principle that compliance with high ethical standards is the responsibility of each person.

We are working to improve the enforcement of the ethics laws and regulations. When violations are identified that cannot be resolved, for example, by divestiture or disqualification, then enforcement action may be required. We favor strict enforcement of all of the Standards of Conduct laws; however, as far as I know, no enforcement actions have yet been taken under 2397, 2397a, 2397b, or 2397c. All three are new or recently revised. After remedial changes have been made to the laws and more experience gathered, enforcement actions will be initiated in appropriate cases.

We strongly believe that the constant changes in the rules during the past two years, and the possibility that they will change again in the next two weeks, have the potential for damaging our compliance efforts and lessening respect for the notion of Government Ethics in general. The establishment of the guidelines is a function of the lawmakers. Detailed implementation is our responsibility as authors of the regulations. It is in our mutual interest to change these no more than necessary after they are established. We are dealing with a department of three million people, all of whom are expected to get the mission accomplished, often under heavy budgetary and time constraints. These are dedicated people with the best interests of the country at heart. Thus, it seems to me that leaving the rules alone, at least until we find out how they work, is one of our most important responsibilities.

At present, several legislative initiatives are pending, all of which would change the rules to one degree or another. Each arises from a perceived need to tighten one particular aspect or another of the rules of ethics. For example, both a Senate and a House bill address the issue whether the legislative branch should be bound by rules similar to the post-employment restrictions of 18 U.S.C. § 207. Clearly such restrictions should not depend on which branch of Government one has served and, in that sense, the proposed legislation is desireable. For reasons which are not entirely clear, however, both bills seek to rewrite section 207. What that does for those of us in the executive branch who have long had such restrictions applicable to us is to change the rules again. This is particularly damaging to the Department of Defense which is still in the process of assimilating recent enactments which apply only to it and to no other agency. A more workable approach would be to include legislative branch personnel in the present section 207, modifying definitions as appropriate because of the differences in the two branches.

Another example of proposed legislation deals with consultants. It would require defense consultants to register. That may be a good thing and it may actually address a real evil. I agree with Senator Warner, who urged at a House Armed Services Committee hearing last week, that there should be hearings in the next Congress which specifically address whether there is a need for this legislation and how its goals can best be accomplished. It should not be inserted in an appropriations bill where it is certain not to receive the attention it deserves. We have found the House Armed Services Committee staff more than willing to discuss alternative language with us, but that is no substitute for thoughtful consideration of a measure which involves issues of privacy as well as the integrity of the procurement process.

Of course, this latter proposal, like so many others in recent years, would apply only to the Department of Defense. There seems to be something amiss when rules which supposedly enhance integrity are made applicable to only one part of the Government. We must ask whether we are serving the system and the country well when we attack the integrity of those involved in the process rather than providing guidelines for the process itself. And we must also ask why it

is that we do not demand of every individual involved in procurement throughout Government the same high standards as in any one department.

We need to address the question of organizational conflicts of interest in defense procurement. This is an issue which has previously been addressed in the Federal Acquisition Regulations; however, the best approach to concerns in this area is through regulations which provide the flexibility for change as the need for it arises. Locking into legislation such things as the precise information to be provided in every case and designating where the review will be performed seems to us to defeat the ultimate purpose, which is to insure that advice we receive from consultants is impartial.

Finally, let me again endorse the policy of the Department of Defense to have a sound and effective Standards of Conduct Program. We recognize and appreciate the interest of this Committee. Our cooperative efforts have produced some new approaches to reporting and enforcement that will help strengthen the Program. I expect that future rules will build on this progress. I am available now to address your questions.

TABLE OF PRINCIPAL CONFLICTS OF INTEREST RULES FOR THE DEPARTMENT OF DEFENSE

RULE CITE	TYPE RULE & DURATION	ACTIVITY PROHIBITED	PERSON TO WHICH PROVISIONS APPLY	PENALTY OR REMEDY	NOTES
APPLICABLE TO CURRENT DOD PERSONNEL					
Agency Regulations (e.g. 49 CFR 99.735-9 for DOT personnel	Civil and Administrative --applies throughout employment or service	1. Permitting the prospect of employment to affect performance of duties. 2. Communication information of particular interest to a prospective employer (even if that information is generally available to the general public.	All employees (includes active duty military where applicable)	Adverse or disciplinary action (for military personnel criminal action under UCMJ could result)	
18 U.S.C. 201	Criminal --applies throughout employment	Offering, giving, accepting, or requesting something of value to influence an official act	All employees	Fine and 15 years imprisonment	
18 U.S.C. 203	Criminal --applies throughout employment or service	1. Accepting compensation from unofficial sources for outside work related to any particular matters in which U.S. has direct or substantial interest. 2. Accepting unofficial compensation for official duties.	All full-time employees	$10,000 fine and 2 years imprisonment. Permanent ban or employment with U.S.	5
18 U.S.C. 208	Criminal --applies throughout employment or service	Participating in a particular matter involving a firm with which the employee or family member of employee 1. is negotiating 2. has an arrangement regarding future employment 3. has other financial interests.	All officers of the uniformed services and civilian employees (does not apply to enlisted personnel of the uniformed services)	$10,000 fine and 2 years imprisonment	1
10 U.S.C. 2397a	Civil and Administrative --applies throughout employment or service	Affirmative requirement to : 1. report employment contact to the supervisor and the DAEO or designee, and 2. to disqualify themselves from all participation in the performance of any procurement function relating to any contacts of that defense contractor for as long as future employment opportunities have not been rejected.	Covered defense officials, i.e. 1. active duty military officers O-4 and above and civilian DoD personnel paid at or above GS-11 who 2. have participated in the performance of a procurement function in regard to a contract awarded by DoD who are contacted by or contact that defense contractor regarding future employment	10 year ban on employment with that defense contractor. $10,000 civil penalty. Additional $10,000 penalty if employment accepted	2, 4
E.O. 11222 May 8, 1965 & DoDD 5500.7, F.3.b.	Administrative --applies throughout employment including the year of termination with government	Affirmative requirement to file a Confidential Statement of Affiliations and Financial Interests DD Form 1555 with supervisor or DAEO or designee.	Except for those who file SF278 1. commanders and deputy commanders or major installations and operations 2. personnel paid at a GS-15 rate or below and military members O-7 and below who are in a decision making position that could impact on the financial interests of a nonfederal activity 3. special government employees except those named in DoDD 5500.7 enclosure 5	Adverse or disciplinary action	
P.L. 95-521 Ethics in Government Act of 1978 & DoDD 5500.7, F.3.a.	Civil and Administrative --applies throughout employment and must file last report no later than 30 days after termination with government	Affirmative requirement to file a Financial Disclosure Report SF 278 with the DoD Component. Reports are available for public review.	1. General and Flag officers O-7 and above 2. SES and GS-16 above 3. Other than GS personnel who are paid as GS-16 or above 4. Schedule C employees unless excluded by the Director of OGE	Adverse or disciplinary action, $5,000 penalty	

Source: DoD IG

CAUTION: This is a SUMMARY of the rules.
Refer to cited statute or regulation f

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RULE CITE	TYPE RULE CITE	ACTIVITY PROHIBITED	PERSON TO WHICH PROVISIONS APPLY	PENALTY OR REMEDY	NOTES
APPLICABLE TO FORMER DOD PERSONNEL					
SELLING					
37 U.S.C. 801 (b)	Civil --applies for 3 years from date name placed on retired list	Engaging in selling supplies or war materials to an agency of the DoD, the Coast Guard, PHS, or NOAA	Officers on the retired list of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, PHS and NOAA	Prohibition from receivin any payment from any appropriation (including retired pay)	4
18 U.S.C. 281(a)	Criminal --applies for 2 years	Representing anyone in the sale of anything to the government through the department in whose service retired status is held	Retired officer of the armed forces	$250,000 fine, 2 years imprisonment and loss of right to hold federal office	
REPRESENTING					
18 U.S.C. 207(a)	Criminal --applies for life	1. Knowingly acting as agent or attorney or representing any other person by a. any formal or informal appearance before the government, or b. making any oral or written communication on behalf of that person with intent to influence a particular matter 2. In connection with a particular matter involving specific parties, of which the government is a party or has a direct and substantial interest 3. where employee participated personally and substantially while in government service.	All former officers of the uniformed services and all former civilian employees (does not apply to former enlisted personnel of uniformed services)	$10,000 fine and 2 years imprisonment	
18 U.S.C. 207(b)(i)	Criminal --applies for 2 years after termination with government	1. Same as above for 18 U.S.C. 207(a) 2. Same as above for 18 U.S.C. 207(a) 3. which matter was actually pending under the employee's official responsibility within one year prior to termination with the government.	Same as for 18 U.S.C. 207(a)	Same as for 18 U.S.C. 207(a)	
18 U.S.C. 207(b)(ii)	Criminal --applies for 2 years after termination with government	1. Knowingly represents, aids, counsels advises, consults or assists in representing any other person by formal or informal appearance before the government 2. Same as above for 18 U.S.C. 207(a) 3. Same as above for 18 U.S.C. 207(a)	Former officers and employees 0-9 or GS-17 and above and designated SES, 0-7 and 0-8 officers and employees	Same as for 18 U.S.C. 207(a)	
18 U.S.C. 207(c)	Criminal --applies for 1 year after termination with government	1. Same as above for 18 U.S.C. 207(a) 2. In connection with any particular matter 3. which is pending before the department where the individual served or was employed	Same as for 18 U.S.C. 207(b)(ii)	Same as for 18 U.S.C. 207(a)	
18 U.S.C. 281(b)	Criminal --applies for 2 years after retirement	Acting as agent or attorney for prosecuting or assisting in prosecuting any claim against the United States 1. involving the department in whose service retired status is held 2. involving any subject matter with which the individual was directly connected while in an active duty status	Retired officers of the armed forces	$250,000 fine and 1 year imprisonment	4

CAUTION: This is a SUMMARY of the rules.
Refer to cited statute or regulation for
complete information

Source: DoD IG

TABLE OF PRINCIPAL CONFLICTS OF INTEREST RULES FOR THE DEPARTMENT OF DEFENSE

RULE CITE	TYPE RULE & DURATION	ACTIVITY PROHIBITED	PERSON TO WHICH PROVISIONS APPLY	PENALTY OR REMEDY	NOTES
ACCEPTING EMPLOYMENT					
10 U.S.C. 2397b	Civil --applies for 2 years after termination with government	1. Accepting employment with a defense contractor with which the individual has acted as a primary representative of the U.S. in negotiating a contract or in a settlement involving a defense contract, in excess of $10m. 2. Accepting employment with a defense contractor with which the individual performed a. procurement function for the U.S. b. for a majority of working days c. at a site or plant armed or operated by the defense contractor and d. that site was the principal location of performance of the Procurement function 3. accepting employment from a defense contractor with which the individual performed a. a procurement function for the U.S. b. on a majority of working days c. relating to a major defense system d. involving decision-making responsibilities e. through contact with the contractor	1. Former officers and employees 0-7 or SES and above 2. Former officers and employees 0-4 or GS-13 and above	$250,000 fine ($500,000 liquidated damages against contractor)	4
POST EMPLOYMENT REPORTING REQUIREMENT					
10 U.S.C. 2397	Civil --applies for 2 years after termination with government	Affirmative requirement to file a Report of DoD and Defense Related Employment DD Form 1787 when employed at an annual rate of $25,000 or more with a major defense contractor (which was awarded DoD contracts totaling at least $10,000,000 during the prior year)	Former DoD personnel 1. who served in pay grade 0-4 or above with ten years active military service 2. who were civilians paid at a GS-13 rate or higher	$10,000 administrative penalty	3, 4
37 U.S.C. 801(b) 5 U.S.C. 5532 & DoDD 5500.7	Administrative --applies for 3 years after retirement	Affirmative requirement to file a Statement of Employment Report DD Form 1357 which indicates whether the individual is employed with a defense contractor	Retired regular officers	Withholding retired pay	4

NOTES

1. Penalty can be avoided by notification to supervisor of initial employment contact and cessation of all contact

2. A rebuttable presumption in favor of the covered official that a failure to report or disqualify is not a violation if the DAEO or designee has given a written opinion stating the report or disqualification is unnecessary

3. A virtually identical provision works in reverse and applies to employees or consultants to DoD who within 2 years were employed or consultants to major defense contractors

4. These rules apply only to current or former Department of Defense officers and employees

5. Temporary and part-time employees (e.g., consultants) may accept compensation for outside work in which the U.S. has an interest if the matter is unrelated to the consultant's official duties

CAUTION: This is a SUMMARY of the rules. Refer to cited statute or regulation for complete information

Source: DoD IG

United States of America
**Office of
Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

SEP 16 1983

Mr. David O. Cooke
Deputy Assistant Secretary (Administration)
Department of Defense
The Pentagon
Washington, D.C. 20301

Dear Mr. Cooke:

As part of our agency relations work, my staff recently completed a review of the ethics program in the Office of the Secretary of Defense. Your courtesy and cooperation and that of your staff greatly aided us in performing this review. While we found the structure of your program to be sound, we have some recommendations to improve it further.

The Department's system for collecting and reviewing public financial disclosure statements (SF 278's) is thorough and effective reflecting the concern and competence of the personnel operating the system. The system for processing confidential statements (DD 1555's) also appears to be working well. The inclusion of the filing status on position descriptions and in position numbers should make collecting reports from all covered filers a nearly automatic process. We were encouraged to learn that you will allow positions below the GS-13 level to be covered by the filing requirements this year.

Currently, the Department has no system for monitoring confirmation agreements made by presidential appointees to prevent conflicts of interest. Since it is your responsibility to ensure compliance with such agreements, we recommend that a staff person, either with the personnel office or the Office of General Counsel, be routinely apprised of any such agreements so that confirmation that required actions have occurred can be obtained within a reasonable time period. Also, in the case of a recusal agreement, a screening arrangement must be established so that matters affecting an appointee's financial interest are routinely shielded from him or her and directed to another official.

We have reviewed the Inspector General's report on the recent audit of the Defense Science Board which discovered improper handling and review of confidential financial disclosure reports required of Board members. We particularly share the IG's concern over members participating in Board activities before completing financial disclosure statements, and over the superficial review of these statements. Both the Inspector General and the staff attorney with the General Counsel's office who handles ethics matters told us they felt these problems, now brought to light, would be solved. We were pleased to learn that the staff attorney had spoken to the Board members following the IG's audit, and we encourage you to play an active role in monitoring this area. Particularly, you should ensure that the executive secretaries of Defense Science Board task forces are seeing that Board members are complying with applicable ethics laws and regulations.

The Department of Defense standards of conduct (DOD Directive 5500.7) are out of date and should be revised as soon as possible to take into account the enactment of the Ethics in Government Act and to formalize the designation of positions below GS-13 for purposes of confidential financial disclosure. We also learned there is no regular training for employees in the Office of the Secretary on the standards of conduct and ethics laws. The Inspector General showed a strong interest in employee training and suggested that a segment on ethics could be worked into other required training. We recommend that your office join with the Office of the Inspector General and the Office of the General Counsel to develop a training package. Our Office would be willing to assist in this effort, and in fact, Bob Flynn of our staff has already met with the Assistant Inspector General for Management who had expressed an interest in seeing the materials we have developed.

We commend you on the interest and effort you and DOD personnel worldwide have put into the Department's ethics program and believe the above recommendations will improve it even more. Please contact Mary Biesenbach of my staff if we can be of any further help. We would appreciate your informing us within sixty days of actions you have taken or plan to take on our recommendations.

Sincerely,

David H. Martin
Director

AGENCY REVIEW

Agency: Office of the Secretary of Defense

Review Dates: June 20-22, 1983

Agency DAEO: David O. Cooke
Deputy Assistant Secretary
Administration

Agency Staff: David W. Ream
Office of the Assistant
General Counsel (Legal
Counsel)

Karl F. Becker
Director for Personnel and
Security

Patricia A. Perry
Deputy Standards of
Conduct Counselor

OGE Staff: Mary Biesenbach
Yvonne Wright
Management Analysts

BACKGROUND

The Department of Defense (DoD) is administered by the Secretary of Defense who is the principal assistant to the President in all matters relating to national defense and security, and who exercises direction and control over the organized military Departments of Army, Navy and Air Force, the Joint Chiefs of Staff, the unified and specified commands and the various defense agencies. The services presently consist of about 2 million men and women on active duty and there are about 1 million civilian employees in the Department. The Office of the Secretary of Defense (OSD) includes the offices of the Deputy Secretary, the Under Secretary for Policy, The Under Secretary for Research and Engineering, seven Assistant Secretaries and the General Counsel and other staff offices. There are 4,542 military and civilian personnel in the Office of the Secretary and the Joint Chiefs of Staff.

ORGANIZATION OF THE ETHICS PROGRAM

David O. Cooke, Deputy Assistant Secretary Administration, is the Designated Agency Ethics Official (DAEO) for the Department of Defense. Financial disclosure statements, both public and confidential, for the Office of the Secretary, the Joint Chiefs of Staff and the unified and specified commands are handled by the Office of Karl Becker, Director for Personnel and Security. The three staff members who process the statements rely on advice from David Ream, staff attorney with the Office of the Assistant General Counsel (Legal Counsel), who also handles most counseling and advice for DoD headquarters. The Inspector General (IG) has good relations with the Office of the General Counsel and the DAEO, and expects to be asked to comment on any revisions to the standards of conduct regulations. The IG also told us he would like to survey the ways financial disclosure statements are handled in the Department.

Both the DAEO and the Director for Personnel and Security spend less than 5% of their time on ethics matters while two members of the Personnel Director's staff, a Deputy Standards of Conduct Counselor and a clerical assistant, spend full time with their supervisor spending about 30% of her time. The staff attorney spends about half of his time on ethics.

PUBLIC FINANCIAL DISCLOSURE

There are 550 filers of public financial disclosure reports (SF 278's) in the Office of the Secretary and the Joint Chiefs of Staff. The clerical assistant sends a notification letter to each filer annually, enclosing a blank SF 278 and a copy of the previous year's report. All new and terminating civilian SF 278 filers are processed through the office and are given a blank SF 278 at the time. Military personnel process in and out with their service and are given their first and last forms at this point, although military assigned to OSD file their annual statements with the DAEO. The staff person who processes consultants for the personnel office alerts the DAEO's office if a consultant paid at the GS 16 level works more than 60 days. The office routinely follows up on late reports although they still have a few delinquent termination reports from 1981 and 1982 of which OGE is aware. Most 1983 annual reports have been filed.

All statements are certified by supervisors before being forwarded to the personnel office. The clerical assistant performs an initial review checking for errors and omissions and consulting Moody's or Standard and Poor's and the DoD list of contractors. Minor problems are corrected over the telephone, but if the problem is significant the statement is returned with a memorandum signed by the DAEO pointing out errors. Statements are then reviewed by the Deputy Counselor, her supervisor, then the Personnel Director and finally the DAEO. If an individual reports an interest in a DoD contractor, the DAEO sends a cautionary letter warning that disqualification may be necessary. If divestiture or disqualification is required, individuals must confirm the action in a memorandum routed through the supervisor. Disqualification memos are also distributed to subordinates.

We reviewed a sampling of 56 statements, some of which were still in the review process. We found the reviews to be very well done and spoke to the reviewers for awhile about some of their problems. They were confused about different kinds of trusts, and did not realize that there are no blind trusts in the Department. They received 14 requests from the public to review financial disclosure statements in 1983, 20 in 1982. Requests have come from the press, Common Cause, and several law firms.

PRESIDENTIAL APPOINTEE AGREEMENTS

The staff attorney told us there was no system in place for monitoring presidential appointee agreements. In fact, he said these agreements were usually made at the General Counsel or DAEO level on an informal basis and he was not even aware of them many times. He said that several times when he was checking on an agreement at OGE's request, he found the individual had no recollection of an agreement even though there was documentation of it. He agreed that perhaps they should develop a system to ensure that such agreements are carried out.

CONFIDENTIAL FINANCIAL DISCLOSURE

There are approximately 740 filers of confidential disclosure statements (DD 1555's) in the Office of the Secretary and the Joint Chiefs of Staff. All are reviewed by supervisors before being sent to the personnel office for review. The classification division in the personnel office designates filers by reviewing position descriptions. Supervisors have disputed some of their designations but usually the classifiers' decisions are upheld. The filing status is noted on the position description and the position number is coded so that the computer can be used to compile a list of filers. As of this filing year, GS 12 positions will be designated to file for the first time.

In September, the personnel office notifies administrative officers of the filing deadline and they in turn notify filers. The clerical assistant checks names off a list as completed reports come in and does a preliminary review, looking for DoD contractors. Filers of these statements must make disqualification if they have any interest in a DoD contractor. Administrative officers provide newly covered employees with blank forms for their initial statements. All consultants, presently 315 in OSD, file 1555's before coming on board. One staff member in the personnel office processes all consultants in DoD and the Army, but not those in the other two services.

We reviewed 47 statements and found most had been filed on time and were certified. Out of our random sample, only one statement was missing and the office was still trying to collect it. Although the personnel office staff was not aware of any requests by the Inspector General for financial disclosure reports the IG told us he did use them sometimes in investigations.

When we spoke to the IG, his office had just finished an audit of the Defense Science Board. They looked at financial disclosure reports and found conflicts on the part of some members, although staff of the personnel office told us most board members had submitted disqualification statements. The IG's office also found that some board members were being appointed before their statements had been reviewed, and they believed the statements were not being reviewed carefully. The IG told us he believed the Defense Science Board had "learned a lesson." David Ream, staff attorney, also noted that he had spoken to the board members after the IG's audit and pointed out their problems to them. He emphasized that it was the responsibility of the board members to disqualify themselves at the proper time. He also told us he believed they had corrected the problem of advisory board members working before their statements were approved.

STANDARDS OF CONDUCT REGULATIONS

David Ream, staff attorney, told us that proposed revisions to the DoD standards of conduct regulations (DoD Directive 5500.7) which he drafted were published in the Federal Register in November 1979, but were never approved. He wanted to toughen the rule generally prohibiting gifts to superiors and make it absolutely clear that it applies to military as well as civilian personnel. Also he wanted to cut out all gift acceptance from DoD contractors, but was overruled on this. He told us, however, that he feels Secretary Weinberger may be amenable to tightening up on gift acceptance. It should be noted that there is a provision in the present regulations which requires that gifts received in circumstances other than those listed in the exceptions to the general prohibition must be reported promptly to the appropriate Standards of Conduct Counsel.

When we told the staff attorney that the Army was considering revising its standards of conduct regulations to require additional reporting of non-Federal employment, he did not think this was a good idea. He added that we are becoming "too busy adding to defenses to address problems."

The DoD Directive dated January 15, 1977, is seriously outdated in that it does not reflect the changes brought about by the Ethics in Government Act nor does it allow positions below GS 13 to be covered by the filing requirements of the Executive Order. The staff attorney told us he hopes to get started on revisions soon and said he would try to have a draft ready in September.

EDUCATION, TRAINING AND COUNSELING

Although all new employees receive the DoD Directive when coming on board and are required to certify to having received and to having an understanding of it, they are not automatically counseled on the standards of conduct, nor is there any ethics training available for current employees. They do get post-employment material when they leave Government and are instructed on the reporting procedure for DoD related employment, required of certain former personnel.

The Inspector General was aware of the need for employee ethics training and suggested that it could be included in other required training such as security briefings. He was very interested in our training materials and agreed to our suggestion that Bob Flynn come over to present them to his staff. Since our visit, Bob Flynn met with the Assistant IG for Management who expressed a strong interest in getting a training program established. The staff attorney told us he worries most about people who enter Government from industry; he feels they are more in need of training than regular Government employees.

Most of the counseling done by the staff attorney is oral, while only about 25% of his advice is in the form of written opinions. He told us the most common issues are post-employment, and gratuities, including receptions, lunches and contractor-provided transportation. He also spends time answering questions from contractors. He was able to convince one contractor that Government employees should always pay for their own meals.

The staff attorney allowed us to review his opinion file which contained two interesting opinions on contractor-paid transportation. The first signed by the General Counsel and written to the under secretary of a service reiterated an earlier conclusion that the standards of conduct prohibit a potential member of the service's science board from accepting science board travel expenses from his principal employer, a DoD contractor. On the other hand, the second opinion granted permission to an executive officer of the Defense Science Board (DSB) to accept transportation on an aircraft belonging to a board member's principal employer, again a DoD contractor, in order to use the flight time to brief the board member on DSB business. The justification for allowing acceptance was that it would facilitate his work for the board and the benefit would accrue to the Government, not him. The board member was using the transportation in his private capacity and the executive officer had been away on official business.

The Inspector General provided us with a copy of his office's semiannual audit report issued May 27, 1983. Over the six-month period covered by the report the hotline office received 2,061 calls and letters of which 755 contained sufficient data to warrant further action. The report summarizes significant pending cases as well as completed cases and their resolution. The cases run the gamut from theft and bribery to illegal use of military telephone lines. Audit functions are divided between internal activities and those of contractors.

CONCLUSIONS AND RECOMMENDATIONS

- The system for processing public financial disclosure statements is very thorough, even down to routinely supplying blank forms to terminating employees. Providing filers with a copy of the previous statement is also an excellent idea for cutting down on errors. The reviews are being carefully done by the personnel office staff who rely for advice on the General Counsel's office. This seems to be an effective and efficient combination.

- The confidential financial disclosure system also seems to be working well. In fact, it could be a model for other systems because of the ease of accounting provided by the inclusion of filing status on the position descriptions and in the position number.

- The standards of conduct regulations are seriously out of date. We recommend that revisions be drafted as soon as possible to take into account the Ethics in Government Act and to formalize the designation of confidential filers below GS 13. We would also strongly support the staff attorney's interest in tightening the standards on gift acceptance.

- There is no regular ethics training provided for employees, although counseling seems to be very good. We recommend that the DAEO's staff with assistance from the Office of the General Counsel work with the Inspector General in developing a training program that could be included in other training. Our Office will also assist in this effort.

- There is no system for monitoring presidential appointee agreements and evidently some confusion exists over the substance of the agreements. We recommend that a staff person either in the personnel office or the General Counsel's office be routinely apprised of any agreements made so that confirmation can be obtained within a reasonable time period.

Mary Biesenbach

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Management Analyst

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OCT 23 1987

Edward J. Shapiro, Esq.
Assistant General Counsel
(Legal Counsel)
Office of General Counsel
Department of Defense
Washington, D.C. 20301-1600

Dear Mr. Shapiro:

As part of our agency relations program, my staff recently completed a review of the ethics program at the Department of Defense, focusing on the Office of the Secretary of Defense (OSD) and the Office of the Inspector General (IG). We had initially reviewed your ethics program in 1983, and the latest review followed our reviews of the Army, Navy, and Air Force ethics programs in 1986.

My staff was most concerned about the financial disclosure systems, and the status of the revision of DoD Directive 5500.7 (Standards of Conduct) at the time of the review. With regard to the public reporting system, you should obtain after the completion of the current filing cycle as many as an estimated 126 reports missing from the 1986 cycle, and you should follow-up on two reports involving officials who had financial interests in DoD contractors which did not appear to have been questioned. In addition, you should do a better job of specifying in the "heads-up" memoranda any DOD contractors in which filers may have reported finanical interests. As for the confidential reporting system, it could be improved by having all of the reports filed as required (as well as by obtaining the 19 reports missing from our sample), by addressing the problems identified on the reports we reviewed, and by more completely specifying in the "heads-up" memoranda sent to special government employees any DoD contractors in which the filers may have reported financial interests or by simply sending the memoranda when financial interests in DoD contractors are reported.

After we completed our review of your ethics program, we formally reviewed the revised standards of conduct submitted to OGE on or about May 7, and we recommended changes. Once these changes have been made, the standards will be most effective.

Your program for the education, training, and counseling of employees has been adequate. We would recommend that you fully use the DoD Ethics Oversight Committee in the continuing development of education and training programs, and, pursuant to the revised standards of conduct, that you ensure that any rendering of advice, as well as the underlying facts, are set forth in writing whenever practicable.

As indicated above, we also reviewed the IG's ethics program — in particular, the confidential reporting system and its efforts with regard to education, training, and counseling. The IG could improve its confidential reporting system by ensuring that the list of "DoD Prime Contractors Receiving Awards Over $25,000" is used in reviewing the reports, by sending copies of the warning letters to the filers' supervisors, and by ensuring that filers report the holdings of their spouse and dependent children. As for education, training, and counseling, the IG should provide training to reviewing officials on how to review the confidential reports and to filers on how to complete the reports, and should increase its efforts in providing post-employment counseling for departing employees.

In closing, I would like to thank you and your staff, as well as the IG staff, for the excellent cooperation we received. Please advise me within 60 days of the actions you take concerning the recommendations discussed in the report. We will schedule a brief follow-up review six months from the date of this report to determine what corrective actions have been taken.

Sincerely,

Donald E. Campbell

Donald E. Campbell
Acting Director

cc: Richard Lieberman
Deputy Inspector General for Program Planning,
Review and Management, DoD IG

Richard Lieberman
Inspector General
Department of Defense
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AGENCY REPORT

AGENCY: Department of Defense

REVIEW DATES: February 6 - March 3, 1987

OGE STAFF: Ed Pratt, Daryl Selden, and Yvonne Wright
Management Analysts

AGENCY DAEO: David O. Cooke
Deputy Assistant Secretary
(Administration)

AGENCY STAFF: H. Lawrence Garrett
General Counsel

Ed Shapiro
Assistant General Counsel (Legal Counsel)

Dave Ream
Attorney - Advisor

Pat Perry
Personnel Staffing Specialist
(until January 15, 1987)

Pat Ryan
Personnel Staffing Specialist
(since February 17, 1987)

BACKGROUND

The Department of Defense (DoD) includes the Office of the Secretary of Defense (OSD), the Joint Chiefs of Staff, the Armed Forces Policy Council, the military departments and the military services within those departments, the unified and specified commands, and the various DoD agencies (hereinafter, the military departments and DoD agencies will generally be referred to as the "DoD components"). OSD and the Joint Chiefs of Staff, though separately identified and organized, function in full coordination and cooperation in providing staff assistance and advice to the Secretary of Defense. There are approximatly 5,000 military and civilian personnel assigned to OSD and the Joint Chiefs of Staff.

OSD includes the offices of the Deputy Secretary of Defense, the Executive Secretary of the Department of Defense, the Assistant to the Secretary and the Deputy Secretary of Defense, the Under Secretary of Defense for Policy, the Under Secretary of Defense for Research and Engineering, 11 Assistant Secretaries, the General Counsel, and the Inspector General (IG). The heads of these offices are civilian staff advisors to the Secretary and perform such functions as he assigns to them.

The Joint Chiefs of Staff are the principal military advisors to the Secretary of Defense as well as to the President and the National Security Council. Each member of the Joint Chiefs of Staff, other than the Chairman, is the senior military officer of his respective service and is responsible for keeping the Secretary of his military department fully informed on matters considered or acted upon by the Joint Chiefs of Staff.

This was OGE's second review of the DoD ethics program as we had previously reviewed the program in 1983. In addition, we reviewed the ethics programs of the three military services during 1986 and much of the information from those reviews impacted on the OSD review, particularly as to our review of DoD's proposed revision to the DoD standards of conduct.

ORGANIZATION

David O. Cooke, the Deputy Assistant Secretary (Administration) and Director of the Washington Headquarters Services (WHS), was the DAEO at the time of our review. Although never formalized in writing with OGE, Leon Kniaz, Director of Personnel and Security, WHS, was the Alternate DAEO.

The title of DAEO had in fact been informally transferred to H. Lawrence Garrett, the General Counsel at the time of our review, although this had not yet been formalized in writing pending approval of the transfer by the Deputy Secretary of Defense in an action memorandum prepared by the Deputy Assistant Secretary (Administration) and the General Counsel (the transfer was subsequently made with the publishing of the revised standards of conduct as a final regulation in the Federal Register on June 19). The General Counsel had essentially implemented the OSD ethics program through a Standards of Conduct Office within the Office of the General Counsel which was established in May – June of 1986. At the time of our review, the Standards of Conduct Office, under the supervision of David Ream, an attorney - advisor, had three military attorneys, a paralegal, two military enlisted personnel, and a secretary. Until recently, none of the positions, with the exception of the paralegal and secretary positions, was permanent. The incumbent of the paralegal position until January 15, Pat Perry, who was largely responsible for administering the OSD financial disclosure systems, was reassigned back to WHS on that date. Her replacement, Pat Ryan, assumed the position on February 17 while our review was being conducted. On February 2 the Standards of Conduct Office was given four permanent military positions (three military attorneys and one enlisted person). However, the attorney - advisor informed us that all of the incumbents were scheduled to be reassigned in June 1987 and he was not certain whether or not all of these positions would be filled. Since our ethics program review, one of the military attorneys left the military service to which she was assigned and is filling a permanent civilian attorney position.

The DoD IG has been substantially involved with the ethics program, particularly in regard to the conduct of ethics - related audits and investigations which are discussed below in the Standards of Conduct section. Furthermore, the IG conducts a substantial ethics program in its own right, much of which is also discussed below in the Confidential Financial Disclosure System section.

Ed Shapiro — the Assistant General Counsel (Legal Counsel), has been somewhat more involved with the ethics program than the General Counsel and would presumably become the Alternate DAEO once the General Counsel is formally designated as the DAEO. In particular, he has made greater use of the DoD Ethics Oversight Committee which was established by his predecessor. The Committee is composed of himself, Mr. Ream, and representatives from the three services who conduct their respective ethics programs on a day-to-day basis. In addition, representatives from some of the DoD components such as the Defense Logistics Agency, the Defense Mapping Agency, and the Strategic Defense Initiative have expressed an interest in joining the Committee. Although the concept has been evolving, some of the specific functions of the Committee are to:

- circulate significant OSD opinions and advice to the DoD components as well as circulating the advice and opinions from individual services and agencies;

- coordinate component positions on legislation;

- develop ethics education and training initiatives such as ethics seminars for contractors; and

- address specific issues such a spousal employment and gratuities (e.g., military officers being offered free subscriptions to weapons magazines).

STANDARDS OF CONDUCT

OSD completely revised DoD Directive 5500.7 (Standards of Conduct) and proposed it in the *Federal Register* in September 1986 as well as sending copies to the DoD components for comment. However, a copy was never formally forwarded to OGE for its review. We reviewed the proposed revised standards during the course of our ethics program review, while OSD was incorporating certain changes recommended by the components, and recommended to OSD that certain additional changes be made. Some of our recommended changes were incorporated into a subsequent revision to the standards presented to us on February 13, while other changes remained outstanding as OSD officials did not agree with the recommendations. In view of OSD's sense of urgency in wanting to publish the standards as soon as possible, we agreed to allow OSD to publish the standards as an interim regulation while simultaneously forwarding them to OGE for its formal review (which OSD claimed would be imminent). Following OGE's formal review and approval, the standards could be published as a final regulation. Since our ethics program review, OSD forwarded the standards to OGE for its formal review on or about May 7 and published them in the *Federal Register* on June 19 as a final regulation prior to our review being completed.

The proposed standards of conduct constitute a sweeping revision of the old standards, published in 1977, including the addition of certain provisions implementing recent ethics statutes affecting DoD specifically and recommendations contained in two recent DoD IG reports. These recent ethics statutes are:

- *10 U.S.C. § 2397a.* Requires the reporting of private employment contacts between certain DoD procurement officials and defense contractors.

- o 10 U.S.C. §2397b. Restricts certain former DoD procurement officials from going to work for DoD contractors within two years of leaving DoD.

- o 5 U.S.C. § 7301 note. Enables Federal officers, employees, and Members of Congress to accept gifts of less than $100 in connection with a ceremony to note the completion of a naval shipbuilding milestone.

Sections 2397a and 7301 note were contained in the FY1986 DoD Authorization Act (Public Law 99-145) passed in November 1985, while § 2397b was contained in the FY1987 DoD Continuing Appropriations Act (Public Law 99-500). Section 2397b repealed another post-government service employment restriction which was contained in the FY1986 DoD Authorization Act and which only applied to a "Presidential appointee in Federal employment [who] acts as a primary government representative in the negotiation of a government contract or the settlement thereof." Section 2397b did not take effect until April 16, 1987.

The two DoD IG reports from which recommendations concerning the standards of conduct emanated were "Allegations of Conflict of Interest Against the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management)," issued on August 16, 1985, and "Final Report on Gratuities and Standards of Conduct Issues Relating to Department of Defense Procurement," issued on February 17, 1987. The first report, which involved Mary Ann Gilleece, recommended, among other things, that the standards be revised to more clearly state the responsibilities of DoD employees and supervisors with regard to recusals, and have the Office of General Counsel furnish senior OSD officials with a written summary of its advice as soon as practicable after responding to their specific inquiries. The responsibilities with regard to recusals have been more clearly stated in the proposed standards, and the DAEO is to ensure that standards of conduct advice as well as facts upon which such advice is based are set forth in writing whenever practicable.

The second report contained a number of recommendations related to the acceptance of gratuities, with those most relevant to the standards of conduct being:

- All DoD procurement organizations should establish an absolute bar on the acceptance of all gratuities from contractors.
- The limitation on the acceptance of gifts in connection with naval shipbuilding ceremonies should be extended to similar ceremonies such as vehicle and aircraft roll-outs, with the allowable value being limited to $10.
- Requests for advisory opinions on conflict-of-interest and post-employment issues and the opinions on such issues by ethics officials should be in writing.
- The acceptance of honoraria from DoD contractors by DoD personnel should be absolutely prohibited.

- The OSD Office of General Counsel should assume the responsibility for the development of a complete ethics program within DoD, to include: (1) the provision of uniform advice and guidance on a broad range of ethics matters to all ethics advisors on a routine basis, (2) the establishment of a system for reporting standards of conduct disciplinary cases to the OSD Office of General Counsel by the military departments and defense agencies on an annual basis, (3) the review by senior military department ethics officers and DoD ethics officers of ethics opinions provided by local ethics advisors for completeness, accuracy, and uniformity, and (4) the memorializing of selected opinions for dissemination throughout DoD to provide more detailed guidance on ethics affairs.

The proposed standards have addressed the recommendations related to the limitation on the acceptance of gifts in connection with naval shipbuilding and similar ceremonies (without reducing the limitation on value to $10), written advisory opinions (as indicated above), and the acceptance of honoraria from DoD contractors. Much of the recommendation related to the development of a complete ethics program has been captured in the proposed regulations as some of the responsibilities of the OSD DAEO and the Ethics Oversight Committee. On the other hand, the recommendation related to an absolute bar on the acceptance of gratuities from contractors was not implemented.

The following are the provisions in the proposed standards for which OSD disagreed with our recommended changes (after each provision is a discussion of the needed change, the rationale for the change, and OSD's objection):

> D.2.1. Outside Employment of DoD Personnel. DoD personnel may not engage in outside employment or other outside activity, with or without compensation, that is not compatible with the performance of their government duties, may reasonably be expected to bring discredit upon the government or DoD Component concerned, or is otherwise inconsistent with the requirements of this Directive. This includes the requirement to avoid actions that reasonably can be expected to create a conflict of interest or the appearance of a conflict of interest.

"[N]ot compatible with the performance of their government duties" should also include, as an example, outside employment which could impair their mental or physical capacity to perform their government duties and responsibilities in an acceptable manner (as cited at 5 C.F.R. § 735.203(a)(2)). OSD officials disagreed as they believed that the one example given sufficiently elucidated the meaning of "not compatible."

> D.3. Gratuities, Reimbursement, and other Benefits from Outside Sources. . . . c. The prohibitions in paragraphs a. and b., above, do not apply to the following:. . . (5) discounts or concessions realistically available to all personnel in the Component, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit.

"[A] vailable to all personnel in the Component" should be qualified to the extent that such availability resulted from a discount being made available to either the general public or to Federal employees as a group. This would be consistent with the guidance contained in OGE informal advisory opinion 85 X 13, dated September 17, 1985, addressing the acceptance of commercial discounts. OSD officials simply disagreed with the informal advisory opinion, contending that there may be discounts available, for example, to an entire military service which would not be inconsistent with the opinion.

> D.3. Gratuities, Reimbursements, and Other Benefits from Outside Sources. . . .c. the prohibitions in paragraphs a. and b., above, do not apply to the following:. . . (15) on an occasional basis only, acceptance of coffee, donuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty [an exception for the acceptance of meals of modest value — $35 or less and not to exceed $250 from any single source in a calendar year — was added to the February 13 revision];

This exception to the prohibition on the acceptance of gifts should be deleted. OSD officials disagreed, contending that many of the components "lobbied" for this exception based on its being a customary way of doing business. However, OSD officials would consider replacing "occasional" with "non-routine" and delete the $35 and $250 limits.

> D.4. Ship Launch and Similar Ceremonies a. Attendance at Ceremonies (1) The "ceremonies" covered by this provision are those associated with the launch or commissioning of a naval vessel, the roll-out of an aircraft, and similar events. . . .

> b. Acceptance of Gifts (1) DoD personnel who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 and the cost is not borne by the government.

This exception should be confined to the launch or commissioning of naval vessels to be consistent with 5 U.S.C. § 7301 note. OSD officials disagreed, contending that the extension of this exception to the roll-out of aircraft or similar events is a reasonable interpretation of the statute.

> D.5. Use of Government Facilities, Property, and Personnel. . . .b. . . ..(2) telephone calls may be made on a limited basis to overcome problems when offical business interferes with personal plans.

"[W] hen official business interferes with personal plans" should be qualified to the extent that it would have to be official business which unexpectedly interferes with personal plans. OSD officials disagreed, contending that this would unduly restrict such allowable use of the telephones. However, once the General Services Administration (GSA) publishes its final governmentwide regulation addressing telephone use, OSD officials would consider revising this provision, as appropriate, to make it consistent with the GSA regulation.

> (Enclosure 3)A.3.18 U.S.C. § 208 a. . . . A "particular matter" may be less concrete than an actual contract, but is something more

> specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his government action, or the decision in which he participates or with respect to which he advises, will have a direct and predictable affect upon such financial interests.

General rule making which may have a "direct and predictable effect upon [one's] financial interests" should be clearly considered a "particular matter." OSD officials disagreed, contending that they do not believe as strongly as OGE does that general rule making having a direct and predictable effect should be considered a particular matter. However, in view of the fact that the Department of Justice (DOJ) is in agreement with OGE on this issue, OSD officials will consult with DOJ on the issue.

In addition, the proposed standards do not address business visitor registration as a means for preventing violations of the post-employment statutes, and the need to obtain advance written approval for certain types of outside employment and activities, nor do they restrict the use of information by former DoD personnel which is not already restricted by an existing statute. OSD officials contend that such measures would constitute unreasonable intrusions into the private lives of current and former DoD employees.

Besides reviewing the standards of conduct, we reviewed the revised DoD regulation (32 C.F.R. Part 166) and DD Form 1787 (Report of DoD and Defense Related Employment), proposed in the Federal Register in November 1986, to implement the changes in the DD Form 1787 reporting requirements. These changes were wrought by a recent revision of 10 U.S.C. § 2397 contained in the FY1986 DoD Authorization Act and include:

- redefining "DoD prime contractor" to include those contractors having $10 million in contracts in lieu of simply $10 million in negotiated contracts;

- raising the salary threshold required to bring former DoD personnel under the reporting requirement from $15,000 to $25,000;

- requiring that filers disclose on the DD Form 1787 more information about their duties and work performed while at DoD and with the contractor;

- requiring that the DD Form 1787 be filed for a period of two years after leaving DoD instead of three years; and

- making those who fail to file subject to an administrative penalty of up to $10,000 in lieu of criminal penalties.

All of the changes, except for the reduction in the period of time for which reports must be filed, appear to have strengthened the system. Our review of the proposed regulation and revised form revealed that the sections in the regulation addressing policy and/or responsibilities should clearly indicate that the purpose of reviewing the DD Form 1787 is to detect possible violations of 18 U.S.C. SS 207 and 281 and 37 U.S.C. S 801(b), and that the form itself should have a block for a reviewer's opinion. OSD officials agreed to make these changes and the proposed regulation and form had become an enclosure to the February 13 revision to the DoD standards of conduct.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

Our review of the public financial disclosure system generally focused on accountability of all reports required to be filed on May 15, 1986, and the review of those reports. We were provided a master list of what appeared to be all covered employees for that period, however, we were told that there had been no routine updating of the list since 1984 as it pertains to new entrant and terminating employees. Generally, what was received was what was processed. We verified all names as they appeared on the master list with reports in the files to determine if all reports had been filed. The list contained 649 names of employees and as many as 126 reports appeared to be missing (another 21 reports which appeared to be missing were to be reviewed by the IG). The Standards of Conduct Office was unaware of many of the delinquent filers until our review. We discussed with OSD the need to obtain the missing reports, however, OSD made no commitment to collect the missing reports as we were told that their current priority was to verify the accuracy of the current master list and prepare for the current filing cycle.

The OSD Personnel Classification Office provides the Standards of Conduct Office a quarterly list of all civilian employees including experts and consultants at the Senior Executive Service (SES) level and the levels of GS-16 and above. This list along with the quarterly world-wide roster of general and flag officers (O-7 and above) are used to make up the master list of employees required to file public reports with OSD. These lists are generally to be updated on a monthly basis but we were told that this had not been the practice since 1984.

We were told that little coordination exists between the Standards of Conduct Office and the OSD Military Personnel Office in notifying the Standards of Conduct Office of new entrant, reassigned, and terminating military personnel. This was particularly critical in the military personnel area as there is relatively greater movement of military personnel as compared with civilian personnel. As a result, there has been little tracking of military personnel assigned to the OSD staff even though the Standards of Conduct Office used the military departments' ethics officers to assist in the identification and collection of annual reports of military personnel.

The reporting cycle is initiated when the DAEO sends a memorandum, notifying filers of the reporting requirement and accompanied by the public reporting form and supplementary instructions. All civilian employees and experts and consultants file directly with the Standards of Conduct Office. However, the general and flag officers file with their respective service and a copy of the reviewed report is filed with the OSD DAEO. We were told that the review of reports at the department level is generally done by several reviewing officials before sign-off and copies being forwarded to OSD. The OSD Standards of Conduct Office has made a determination not to have the DAEO review and sign those reports of military personnel. No further explanation was given.

After the reports have been filed the list of "DoD Prime Contractors Receiving Awards Over $25,000" is used in reviewing the reports and filers who have financial interests in contractors with whom there is the possibility of official involvement are to execute a disqualification statement. Standard and Poor's is also used as a reference source in reviewing the public reports. "Heads-up" memoranda, which are essentially cautionary warnings, are sent to filers who have holdings in DoD contractors for which there is little likelihood of official involvement.

We randomly selected for our review 100 names from the master list of employees required to file public reports of which the Standards of Conduct Office staff could only locate 71 reports. On two reports additional information was needed to determine whether or not there was a possible conflict of interest. One involved a senior official assigned to the Defense Advanced Research Projects Agency who had outside employment as a consultant to a DoD contractor. The other involved the Chairman of the Defense Acquisition Council who had stock interests in four DoD contractors. In neither instance had a "heads-up" memorandum been sent, as had been the practice of the Standards of Conduct Office. The attorney-advisor who supervises the Office agreed to follow-up on the two public reports and provide a written response documenting the circumstances of the review. Some other deficiencies noted included:

- Where stock interests were reported in DoD contractors, and the review sheet had been noted reflecting the interest, not all interests had been indicated in the "heads-up" memorandum sent to the filer.

- There were stock interests noted on the review sheet as being in DoD contractors, however, the interests were not indicated on the DoD contractor list. Nevertheless, "heads-up" memoranda had been sent to the filers indicating that they held financial interests in DoD contractors.

- A spousal stock protfolio was indicated without the holdings being disclosed.

- Some financial interests were not completely identified to enable an adequate review to be done.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

In 1986, 1,467 employees assigned to OSD were required to file confidential financial disclosure reports of which 512 were IG employees (since the IG administers its own confidential reporting system, the IG's system will be discussed separately at the end of this report). Some employees below the GS-13 level file confidential reports. However, all such filers are assigned to the IG which arbitrarily requires that all of its journeyman auditors and investigators file reports.

The administration of the confidential reporting system for full-time employees differs slightly from the administration of the public reporting system. A DAEO notification letter accompanied by a blank confidential reporting form is sent to each filer via the personnel or administrative office of the organization to which the filer is assigned. After the reports have been filed with and reviewed by the filers' supervisors, the reports are forwarded to the Standards of Conduct Office. The reports had been reviewed by Ms. Perry but, beginning with the reports filed in 1987, have been reviewed by Ms. Ryan. Following Ms. Perry's review, the reports were reviewed and signed by an attorney assigned to the Standards of Conduct Office. The list of "DoD Prime Contractors Receiving Awards Over $25,000" is used in reviewing the reports and filers who have financial interests in contractors with whom there is the possibility of official involvement are to execute disqualification statements.

As for the filing of confidential reports by special government employees (SGE's), most of the filers are assigned to DoD advisory committees and the advisory committee of most concern in an ethics sense is the Defense Science Board (DSB). DSB members meet three to four times per year, although much of the work of the DSB is performed by task forces under the direction of DSB members and composed of specialized consultants. The DSB is not routinely briefed on ethics but instead requests that the attorney-advisor who supervises the Standards of Conduct Office attend DSB meetings to brief the DSB on specific topics (for example, an OGE representative attended a DSB meeting on February 12, 1987, at which the attorney-advisor briefed the DSB on 10 U.S.C. § 2397b). On the other hand, the attorney-advisor informed us that he routinely gives ethics briefings at all task force meetings and distributes a handout addressing primarily 18 U.S.C. § 208. The confidential reports filed by members are reviewed by the DSB Chairman, while the reports filed by the consultants are reviewed by a military executive officer assigned to each task force. The DoD contractor list is used in reviewing the reports and any filers having a financial interest in a DoD contractor are sent a "heads-up" memorandum warning them about having any official involvement with the contractor.

We selected for review 136 of the 955 confidential reports required to be filed in 1986 (excluding the 512 reports required to be filed by IG employees). Of the 136 reports selected for review, 19 were missing (15 of 96 reports required to be filed by full-time employees and 4 of 40 reports required to be filed by SGE's). In reviewing the reports, we identified the following problems:

- o Although a disqualification or 18 U.S.C. § 208(b)(1) waiver had been recommended by an OSD ethics official as to a spouse's employment with IBM, no action had been taken.

- An apparent § 208(b)(1) waiver was granted by a filer's supervisor as well as there being no record of the waiver.
- An apparent disqualification statement was not sent to the filer's supervisor and subordinates.
- The determination that a financial interest was not substantial, for the purpose of an apparent § 208(b)(1) waiver, was made by the filer.
- Financial interests in two companies reported by two filers were not sufficiently described for a proper determination to be made as to whether or not the companies were DoD contractors.

We discussed with OSD officials the need to obtain the missing reports and to address the problems identified on the reports and they agreed to do so. In reviewing the reports, we also identified five SGE filers who reported financial interests in DoD contractors which were either not included in the "heads-up" memorandum sent to the filer or for which no "heads-up" memorandum was sent. However, OSD ethics officials stated that the "heads-up" memorandum is a self-imposed requirement and, accordingly, they did not intend to amend an existing memorandum or issue one as to the filers in question on the assumption that a determination had been made that the contractors posed neither a potential nor an actual conflict of interest.

EDUCATION, TRAINING, AND COUNSELING

Most of the ethics education and training efforts within OSD have been confined to providing Executive Level and SES officials with information on the employment negotiation and post-employment restrictions (since the IG administers its own education, training, and counseling program, it will be discussed separately in the section which follows). Included in the information has been an outline of the restrictions contained in 10 U.S.C. § 2397b. Although the attorney-advisor who supervises the Standards of Conduct Office did not know whether other departing civilian professional employees were being systematically provided with such information, he said that departing OSD military officers are presumably being briefed on the post-employment restrictions by the military services to which they are assigned.

There was a "one-shot" ethics training effort undertaken in 1985, in conjunction with OGE, which targeted all OSD supervisors. Furthermore, the DoD Ethics Oversight Committee is getting involved in the education and training area, most recently by having the Defense Mapping Agency share its ethics training materials with the Committee with the aim of developing model training materials for DoD.

The supervisor of the Standards of Conduct Office does an abundance of ethics counseling, much of which he simply does not have enough time to memorialize in writing. However, as indicated above in the Standards of Conduct Section, the standards of conduct specify that the DAEO is to ensure that any advice as well as the facts upon which such advice is based are set forth in writing whenever practicable.

INSPECTOR GENERAL

The DoD IG has a staff of approximately 1,100 people which consisted of approximately 500-600 Auditor positions, 250 Inspectors of DoD activities, 300-400 Criminal Investigators, with the remainder of the staff in various policy and support staff positions. Each major division of the IG is headed by an Assistant Inspector General. By far the largest divisions are those of Audit — which includes Contract Auditing and Acquisition Systems Support; Investigations — which includes Criminal Investigations; and Major Acquisitions. As mentioned above in the Organization section of this report, the IG conducts a substantial ethics program of its own. In accordance with the DoD Standards of Conduct DoD Directive 5500.7, Mr. Richard Lieberman, Deputy Inspector General for Program Planning, Review and Management, has been appointed the IG DAEO. Ms. Rose Mary Orsini, Chief of the Personnel Operations Branch, was appointed as the Deputy DAEO. Legal advice and counsel for the IG's ethics program is provided by the Office of the Assistant General Counsel (Fiscal and Inspector General Matters). The IG assumed responsibility for the implementation and conduct of its own ethics program, as each DoD component is required to do, in November 1986. As such, the IG assumes full responsibility for annual standards of conduct training and new employee orientation; identification of covered positions under both the confidential and public financial disclosure systems; collection, review, and certification of all required financial disclosure reports; resolution of conflicts of interest; and training of ethics counselors to provide ethics guidance and in order to enable them to review positions under their supervision and make decisions as to the applicability of disclosure coverage.

Approximately half of all IG personnel are required to file confidential reports. Coverage is determined by the appropriate Assistant Inspector General within the guidelines of the DD 5500.7 and the guidelines published by the IG. Those guidelines specify that all GS/GM-13 positions involved in contracting, procurement, grant-making, auditing, inspecting, or investigating shall be required to file. In addition, incumbents of these same positions at the GS-12 level and below may be required to file if the incumbent has decision-making responsibility or is responsible for taking government action which could make the individual vulnerable to a conflict of interest or the appearance thereof.

For our review, we sampled approximately 10% of the confidential reports that were on file. Our sample of 60 confidential reports was selected from a master list of 571 covered positions that was maintained by the IG Deputy DAEO. Initially, we were unable to locate 7 of the 60 confidential reports. The Deputy DAEO was able to locate all seven which had either been misfiled or were in the process of being reviewed or potential conflicts being resolved. ~~We raised substantive questions on 17 of the reports we examined involving:~~

- o twelve with stock interests in possible DoD contractors;
- o five with questionable outside employment, one of which was with a government contractor;
- o three for which warning letters were sent to the filers but whose supervisors had not been notified of the potential conflict(s);

- one report which was illegible; and
- three reports which had not been reviewed by the first-level supervisor as required.

We found three reports that had not received adequate review by the first level supervisor as required prior to the ethics counselor's review. In one case, the filer was issued a warning letter for the stocks he held that did business with DoD although the supervisor had indicated that the filer's duties were unrelated to the reported interest — which was not the case at all. The Deputy DAEO agreed that reviewing officials — both ethics counselors and supervisors — needed more training in evaluating entries and reviewing the confidential reports.

Although a number of warning letters had been issued for various holdings of some filers — many more stockholdings went unquestioned. As it turns out, the reviewing officials did not have the list of "DoD Prime Contractors Receiving Awards Over $25,000" that should have been used to complete the conflicts analysis of reported holdings. The Deputy DAEO took steps to obtain the list from the Defense Technical Information Service (DTIS) before our departure. In addition, as indicated above, supervisors had not always been receiving copies of warning letters that were issued and we were assured that such oversights would not occur in the future.

The IG requires that certain kinds of outside employment and other activity be approved in advance and that such employment be reported on the confidential reports.

Although filers were often in compliance with these requirements, reviewing officials in three instances had failed to note that the reported outside employment or other activity had been approved and whether any special conditions applied.

Finally, it was apparent that many filers were unaware that the holdings and interests of their spouses and dependent children were required to be reported.

At our suggestion, the Deputy DAEO intends to step-up her activities in the area of education, training and counseling. We suggested that in addition to the development of overall employee training on the standards of conduct and continuation of new employee orientation on the standards of conduct, more emphasis and training should be given to all reviewing officials — including ethics counselors and supervisors who must review and sign-off on the DD Form 1555's. The Deputy DAEO had taken steps to begin this process in conjunction with OGE prior to our completion of the review.

The Deputy DAEO indicated that there were no SGE's filing confidential reports but, if a contract for a consultant were let (four such consultants were about to be brought on board) — then the disclosure report would be collected and reviewed if warranted by the pay, tour of duty, and activity to be performed.

Finally, we pointed out the need for post-employment counseling for departing IG personnel especially for those affected by the DD Form 1778 (Report of DoD and Defense Related Employment) filing requirement and for designated senior employees. In addition, we suggested that the IG establish procedures to ensure the collection and review of any DD Form 1787's that may be required for IG personnel.

CONCLUSIONS AND RECOMMENDATIONS

In reviewing the DoD ethics program, we identified the following areas in need of improvement:

- The proposed standards of conduct are a substantial improvement over the old standards but could be further improved based on needed changes related to (1) outside employment, (2) the acceptance of gifts, (3) the misuse of government property, (4) the definition of "particular matter" under 18 U.S.C. § 208, (5) business visitor registration, and (6) the misuse of information by former DoD personnel. Accordingly, we recommend that OSD appropriately revise the standards of conduct to address these matters.

- The administration of the public financial disclosure system is inadequate based on the large number of public reports which were missing and the deficiencies we identified during our review of the reports, including the two officials who had financial interests in DoD contractors which did not appear to have been questioned in the absence of any "heads-up" memoranda. Accordingly, we recommend that OSD make an effort to obtain the missing reports after the current filing cycle has been completed, follow-up on the two reports in question, and do a better job of specifying in the "heads-up" memoranda any DoD contractors in which the filers may have reported financial interests.

- The administration of the confidential financial disclosure system (excluding the IG's system) could be improved based on the missing reports, the problems identified on the reports, and, with regard to SGE filers, either "heads-up" memoranda not being sent at all when financial interests in DoD contractors were reported or DoD contractors in which the filers have reported financial interests not being specified in the memoranda which were sent. Accordingly, we recommend that OSD ensure that all of the confidential reports are filed as required (as well as obtaining the 19 reports missing from our sample), address the problems identified on the reports, and do a better job of specifying in the "heads-up" memoranda sent to SGE's any DoD contractors in which the filers may have reported financial interests or simply sending the memoranda when financial interests in DoD contractors are reported.

- The administration of the IG's confidential financial disclosure system could be improved based on the list of "DoD Prime Contractors Receiving Awards Over $25,000" not being used in reviewing the confidential reports, warning letters issued to filers reporting financial interests in DoD contractors not being forwarded to the filers' supervisors to enable proper precautions to be taken to ensure that no conflicts of interest arise, and filers not always reporting the holdings of their spouse and dependent children. Accordingly, we recommend that the IG DAEO ensure that the contractor list is used in reviewing the confidential reports, send copies of the warning letters to the supervisors, and ensure that filers report the holdings of their spouse and dependent children (also, see recommendations below regarding IG education, training, and counseling).

Education, training, and counseling (excluding the IG's efforts) have been adequate and we would only recommend that OSD make full use of the DoD Ethics Oversight Committee in the development of education and training programs, and, pursuant to the proposed standards of conduct, ensure that any advice as well as the facts upon which such advice is based are set forth in writing whenever practicable.

o The IG's education, training, and counseling could be improved based on the deficencies we identified during our review of the confidential reports and the fact that post-employment counseling is not always being provided to departing IG employees, as necessary. Accordingly, we recommend that IG provide training to reviewing officials on how to review the confidential reports and to filers on how to complete the reports, and that the IG increase its efforts in providing post-employment counseling for departing IG employees.

OSD RESPONSE TO OGE RECOMMENDATIONS

Except for the recommended changes to the proposed DoD standards of conduct, OSD and the IG agreed with all of our recommendations.

Ed Pratt 9-3-87
Ed Pratt
Management Analyst

Yvonne Wright 9/3/87
Yvonne Wright
Management Analyst

9/3/87
Daryl Selden
Management Analyst

Jack Covaleski 9/17/87
Jack Covaleski
Chief, Monitoring and Compliance Division

Donald E. Campbell 9/24/87
Donald E. Campbell
Acting Director

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

JUL 29 1988

Honorable William V. Roth, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator:

This is in response to your letter of June 27, 1988, in which you inquired of the status of certain Department of Defense (DoD) regulations of interest to the Office of Inspector General. The questions posed and our responses are set out below:

1. "The President signed the Program Fraud Civil Remedies Act in 1986. In your opinion, has DoD issued regulations sufficient for the adequate implementation of the Act?"

- The Department has not issued implementing regulations for the Act. Draft regulations were published in the Federal Register a year ago and, in my view, implementation should have occurred within a reasonable period of time thereafter. We have been informed that the regulations have been finalized and will be published "shortly." I have expressed my concern about the delay in issuing the regulations to the General Counsel, DoD.

2. "I notice that on February 23, 1987, your office issued a Report on Gratuities and Standards of Conduct relating to DoD Procurement. (IG, DoD 5500.2-H) Did DoD regulatory amendments to its conflict of interest and standards of conduct directive implement the various changes which your office recommended?"

- On May 6, 1987, the DoD reissued DoD Directive 5500.7, "Standards of Conduct." The recommendations contained in the IG, DoD, report were considered in rewriting the Directive. While all of the DoD components are in the process of implementing the Directive, only the Department of the Army has finalized its regulations in this area. The recommendations contained in the IG, DoD, report were addressed by DoD Directive 5500.7 in the following manner (our recommendations are underscored):

a. All DoD procurement organizations should institute a policy barring the provision and acceptance of all gratuities. The DoD Directive continues to provide for numerous exceptions to the prohibition on gratuities. No action has been taken at the Office of the Secretary of Defense (OSD), level to further restrict the receipt of gratuities by individuals within procurement organizations, though some organizations within the Military Departments, such as the Army Materiel Command, have such policies.

b. A specifically tailored Standards of Conduct training program should be developed for procurement personnel. The revised DoD Directive states that the DoD Standards of Conduct Office, which is located in the Office of General Counsel, DoD, will, in part, "develop educational programs and materials for the OSD that shall serve as models for other DoD Components." However, to date, no such educational program has been developed and the only materials which have been developed are analysis papers on recent Standards of Conduct/post employment laws and a table depicting the principal conflicts of interest rules (table attached).

c. Ethics officials should be encouraged to issue written reports for both post employment and conflict of interest situations. The revised Directive provides that ethics officials shall "ensure that Standard of Conduct advice (and facts relied on for such advice) are in writing when practicable." While each DoD component is free to further define the term "when practicable," the head of the DoD Standards of Conduct Office has advised that it is rarely practicable at the OSD level to provide such advice in writing or to otherwise document such advice. While most DoD components have followed this lead, the Army implementing regulation (Army Regulation 600-50) comes closer to following the IG, DoD, recommendation by providing that "except for simple repetitious cases, assistance (by ethics counselors) will be documented by means of written memorandums, telephone logs, etc., for future reference."

d. Each Military Department and the Defense Logistics Agency should create a permanent gratuities board. The Department of the Air Force is the only DoD component that has established a permanent gratuities board. The Defense Logistics Agency addressed the issue by establishing a procedure whereby the provisions of 10 U.S.C. 2207 could be enforced by its Special Assistant for Contracting Integrity. The Navy opted to continue handling such cases with ad hoc gratuities boards. The Army has yet to respond to the recommendation.

e. Disciplinary action against DoD employees should be coordinated with adverse contractual action against contractors who provide gratuities and should receive wide dissemination throughout the organizations. The DoD Directive does not address those issues. While individual cases may result in coordination of adverse actions taken against DoD employees with those taken concerning the contractor, there is no system or

DoD requirement for such coordination. Similarly, there is no system that provides for the collection of information on adverse actions taken by lower level units that would allow wide dissemination throughout an organization.

f. The payment of honoraria by DoD contractors to DoD personnel should be prohibited, and this policy should be widely disseminated, particularly within the DoD medical community. The recommendation was fully implemented by DoD Directive 5500.7. We will follow-up to assure the Directive was widely disseminated within the DoD medical community.

g. The Office of General Counsel should assume responsibility for development of an ethics program within DoD. The development of an effective ethics program in DoD requires commitment of personnel to collect and disseminate ethics opinions, training materials, and ensure that individual programs of the Military Departments meet OSD standards and expectations. We have recommended a number of actions to the Office of General Counsel which we believe will help achieve those goals, such as requiring written ethics opinions which can be analyzed and disseminated and a more effective education and training program. While we recognize the Office of General Counsel does have resource limitations, we believe that increased attention must be given to this most important area.

4. "Has your office reviewed the recommendation of the Packard Commission relating to acquisition and, if so, what is its analysis of DoD implementation of the Commission's recommendations?"

- Neither the Office of Inspector General nor other oversight or audit elements in DoD have reviewed the Packard Commission recommendations. The General Accounting Office is currently undertaking such a project with a scheduled completion date of December 1988.

5. "...I was assured...that DoD was moving to close a serious loophole in its regulations. That loophole allowed Defense contractors convicted of product substitution to reenter the procurement system as subcontractors.... (Are) parties convicted of product substitution excluded from functioning either as contractors or subcontractors to DoD?"

- Despite assurances to this office over the past two years that DoD was moving through the Defense Acquisition Regulation Council to make debarment and suspension actions effective against subcontractors as well as prime contractors, the Defense Acquisition Regulation Council has failed to act. It is the current position of the Under Secretary of Defense for Acquisition that suspension and debarment should not affect subcontracts. I have expressed my concerns in this area to the Under Secretary of Defense for Acquisition and his office is currently studying the matter.

I am pleased to share my views with you and thank you for your continued strong support.

Sincerely,

SIGNED

June Gibbs Brown
Inspector General

Enclosure

OAIG-CIPO/D.R. Glendinning/bf/7-15-88

SUBJECT
CHRON
RF ←
IG(2)

OIG CONTROL #86115 ROTH

DUE DATE 7-14-88

FINAL REPORT ON GRATUITIES AND STANDARDS OF CONDUCT ISSUES RELATING TO DEPARTMENT OF DEFENSE PROCUREMENT

84FDH006

FEBRUARY 17, 1987

The Office of the Inspector General
Department of Defense

Criminal Investigations Policy and Oversight

REPORT OF GRATUITIES AND STANDARDS OF CONDUCT ISSUES RELATING TO DEPARTMENT OF DEFENSE PROCUREMENT

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REPORT ON GRATUITIES AND STANDARDS OF CONDUCT ISSUES RELATING TO DEPARTMENT OF DEFENSE PROCUREMENT

PART I - INTRODUCTION

The integrity of Department of Defense employees, particularly in the procurement community, is the single most important factor in preventing and detecting fraud, waste and abuse in Defense operations and programs. As such, an effective ethics program, with clear and definitive Standards of Conduct and guidance on gratuity issues, is critical to ensuring the integrity of Defense personnel and programs.

In order for an ethics program to be effective within the Department of Defense, that program must provide a clear and understandable statement of the standards expected of the employees and must be coupled with a uniform and coordinated approach to the application and enforcement of those standards. In the absence of such understandable and uniform guidance, employees become lost in the maze of interpretations and applications of the standards.

This review of Standards of Conduct issues has been specifically directed to the application of the standards to departmental procurement personnel, with a special emphasis on the problem of gratuities.

Background

The DoD Directive 5500.7, dated January 15, 1977, prescribes Standards of Conduct required of all DoD personnel, regardless of assignment. Implementation of the Directive has been effected within the various elements of the Department through a wide variety of regulations, instructions, and policy statements, each containing individual guidance on how the Directive is to be interpreted and applied within their area of operation.

Since 1977, numerous laws and regulations have been promulgated which have imposed additional restrictions and standards on Government employees. Today, an employee is forced to refer to a multitude of laws, directives, regulations and instructions, with varying implementing guidance from local commanders, in order to understand the Standards of Conduct expected of the employee in each assignment undertaken.

While the Office of General Counsel is currently working on a revision of DoD Directive 5500.7, which would incorporate changes in the laws since 1977, the latest draft fails to assign overall responsibility for an ethics program and does not sufficiently address other areas in the program which are a current source of confusion and misinterpretation of the standards.

Objectives and Scope

This review was undertaken in an effort to:

- o Identify those areas of confusion which currently exist in the Standards of Conduct program; and
- o Identify corrective action which might be taken by the Department in order to:
  - oo Eliminate that confusion; and
  - oo Ensure proper enforcement of the standards.

The review was conducted by the Office of the Assistant Inspector General for Criminal Investigations Policy and Oversight. It consisted of a review of written material and regulations, both currently in effect within DoD and the Military Departments, and those being drafted for implementation, along with program and policy statements of selected commands. Numerous criminal investigations involving allegations of gratuities provided by Defense contractors were also reviewed and senior officials within DoD were interviewed.

A draft report of our initial findings and recommendations was presented for comment to the DoD General Counsel, Secretaries of each of the Military Services and the Director, Defense Logistics Agency. Responses specifically addressing our draft report were received from each of the Services and the Defense Logistics Agency. The Office of General Counsel responded by stating that our views would be considered in their preparation of the new Standards of Conduct Directive. Where this office agreed with the comments received, appropriate changes, deletions or modifications were made to our findings and recommendations. Where disagreements exist, our draft finding and recommendations are presented, followed by comments received and the final Inspector General position.

Summary Evaluation

While the Department of Defense has historically operated a relatively effective Standards of Conduct program, changes in legislation and lessons learned from recent experiences have created a need for updating and improving this program.

While the current revision of the Standards of Conduct Directive by the Office of General Counsel is a step in the right direction, additional considerations must be made if the Department is to operate an effective ethics program. These considerations would include provisions relating to the following subjects which are discussed in more detail in Part II of this report.

- All DoD procurement organizations should institute a policy barring the provision and acceptance of all gratuities.

- A specifically tailored Standards of Conduct training program should be developed for procurement personnel.

- Ethics officials should be encouraged to issue written reports for both post employment and conflict of interest situations.

- Each Military Department and the Defense Logistics Agency should create a permanent gratuities board.

- Disciplinary actions against DoD employees should be coordinated with adverse contractual action against contractors who provide gratuities, and should receive wide dissemination throughout the organization.

- The payment of honoraria by DoD contractors to DoD personnel should be prohibited, and this policy should be widely disseminated, particular~~l~~ly within the DoD medical comm~~m~~unity.

- The Office of General Counsel should assume responsibility for development of an ethics program within DoD. This program should provide for:

    - the review of opinions by senior Military Department and DoD ethics officers;

    - the reporting of disciplinary cases; and

    - dissemination of selected opinions throughout DoD to provide guidance on ethics issues.

PART II - FINDINGS AND RECOMMENDATIONS

A. Application of Standards of Conduct to Procurement Personnel

Although the provision of gratuities by DoD contractors, and their acceptance by DoD employees, is prohibited under Federal criminal law, DoD regulations, and specific provisions of DoD contracts, recent cases dealing with major Defense contractors demonstrate that gratuities remain a problem. This is due, in part, to regulations which allow for numerous exceptions regarding meals, promotional items and public ceremonies and to the variety of implementing rules employed by numerous DoD procurement authorities regarding the types of gratuities that may be offered and accepted.

The confusion which results from the myriad regulations and implementing policies is especially problematic when addressing standards for procurement personnel, where violations arguably have the greatest adverse impact on departmental operations. Indeed, the need for the highest standards of accountability in the procurement area was voiced by Congress in the passage of the Defense Procurement Improvement Act of 1985 (Title IX, P.L. 99-145). One feature of that Act, for example, provides that any claim by a contractor for reimbursement of the expense of a gratuity is a civil and criminal violation of the False Claims Act (10 U.S.C. 2324 (i)).

An example of the present confusion surrounding the standards is found in the acceptance of promotional items. The current DoD Standards of Conduct Directive allows the acceptance of "unsolicited advertising or promotional items that are less than $5 in retail value." However, because the actual values of such items are rarely determined, DoD employees have on occasion accepted relatively high value items in the mistaken belief that they fall within the exception for items under $5. While the proposed Standards of Conduct Directive raises the limit to $10 and allows for the acceptance of certain refreshments, such as coffee and donuts, the standards still do not provide adequate guidance for establishing the retail value of an item.

Another example of confusion involves the Standards of Conduct exception that allows the acceptance of gratuities in public ceremonial activities. Navy officials have used the exception to justify the attendance of hundreds of Navy officials and their families at ship launching and keel laying ceremonies, the expenses for which are incurred by the contractor who built the vessel.

Such ceremonies at major commercial shipyards have involved the provision of meals and entertainment worth over $200 per person. In many instances, transportation and accommodations, worth hundreds of dollars more, were also provided. In still other instances, senior DoD and Navy officials and their families received jewelry and other memorabilia worth thousands of dollars. Activities such as this clearly violate the purpose of the Standards of Conduct. Congressional concern regarding abuses in this area led to the passage of a new restriction regarding mementoes at ship launchings (P.L. 99-445, Section 145). The new law limits mementoes to an aggregate of $100 per family. It is questionable why DoD should limit promotional gratuities to $10 in most instances, but allow for the full Congressional maximum of $100 at ship launching and similar ceremonies.

Documented instances such as these have also demonstrated that major corporations could engage in a substantial pattern and practice of providing gratuities to DoD officials without any fear of condemnation or punishment.

The resulting confusion regarding acceptable behavior under the Standards of Conduct is compounded by a lack of training regarding the standards. While initial briefings and annual reminders of the regulations are given to all DoD employees, current policies do not require any additional training for procurement personnel. As a result, the training received by procurement personnel is often ineffective in alerting them to special Standards of Conduct problems in the procurement environment.

Recommendations

To eliminate confusion regarding the kinds of gratuities that can be offered and accepted, we recommend that the following actions be taken:

1. All procurement organizations within DoD should establish an absolute bar on the provision and acceptance of all gratuities from contractors. Such a prohibition was adopted by the Army Materiel Command (AMC) in August 1984 and AMC officials report that the program is working well.

2. The policy should be reinforced by the development of a specific Standards of Conduct training program which would be provided to all procurement officials at least on an annual basis. The training should include the development of materials such as films and brochures containing specific guidance which alerts procurement personnel to Standards of Conduct problems which can arise in the procurement area. The materials should be tailored to each procurement command so as to incorporate information on unique situations. Such training

for procurement officials would be in addition to the new employee briefings and annual reminders which are mandated for all employees (See Army Regulation 600-50, para 1-6; SECNAVINST 5370.2H, para 8; Air Force Regulation 30-30, para 12).

3. Section 1461 of the FY 1986 DoD Authorization Act (P.L. 99-145) limits gratuities which can be provided to Federal officials and their families at shipbuilding ceremonies to $100. By regulation, DoD should extend that ban to similar ceremonies, such as vehicle and aircraft rollouts, and limit the allowable dollar value to $10.

Comments

ARMY

1. We support this recommendation. As noted in the draft report, the Army Materiel Command has been following this practice for more than eighteen months.

2. We support the recommendation for improved Standards of Conduct training. The recently revised Army Regulation 600-50, Standards of Conduct, due to be published this summer, requires commanders in conjunction with their ethics counselors to ensure that ethics training focused on issues of concern to the particular organization is given on a regular basis. We do not think it is practical for a Military Service to mandate identical Standards of Conduct training for all its personnel, since the requirement for training in various subject areas would differ dramatically from one assignment to another. On the other hand, general training applicable to all procurement officials throughout DoD could be prepared centrally to avoid duplication of effort.

3. We support this recommendation. The $10 dollar limit on gratuities at rollout ceremonies already has been incorporated in the revision of AR 600-50.

NAVY

I understand an absolute bar on all gratuities will be considered with Office of the Secretary of Defense (OSD) and the other services in the staffing of the new DoD Standards of Conduct Instruction. The question is whether the rule of reason which is inculcated in our Standards of Conduct instruction must be surrendered to a draconian approach to solve this problem. With respect to Standards of Conduct training, the Navy already is in the process of tailoring this training to the special circumstances of its procurement personnel.

AIR FORCE

Nonconcur....
We view the efficacy of an absolute bar as doubtful.
(Note: A portion of the Air Force comments were omitted as they addressed a portion of the draft report which has been omitted in this final report.

DEFENSE LOGISTICS AGENCY

1. As a concept, we agree that an absolute prohibition against accepting gratuities would eliminate many of the uncertainties surrounding the current policy and would simplify program administration. However, we see no reason why whatever policy is established should not be applied to all DoD personnel, rather than limited only to procurement personnel. With respect to a strict prohibition, our experience has been that there are circumstances, albeit rare, when it is appropriate to allow the acceptance of gratuities. A few examples of such cases are: acceptance of emergency medical treatment from a contractor's on site staff physician and acceptance of contractor provided transportation where commercial transportation is not reasonably available and there is no increased cost to the Government. We would support substantial limitations on the acceptance of gratuities recognizing the need to make allowance for the truly unusual case.

2. In 1984, the DLA General Counsel established a group of senior field attorneys to review the operations of each field legal office. That concept became known as "Peer Review." A peer review team visited each field legal office and essentially looked at what they were doing and how they were doing it. One of the areas that was looked at was the Standards of Conduct program. As a result of the peer review effort and a subsequent meeting of all field activity chief counsel, it was agreed that standardized training materials (films, pamphlets, briefing topics, etc.) would be helpful. A team of attorneys was established and recently completed compiling these materials in a four volume set made available to each DLA field office. These standardized materials are to be used in the semiannual reminder and training sessions required by the DLA Standards of Conduct Regulation. Because of the close relationship between Standards of Conduct and fraud reporting and detection, the materials will also be used in educating our employees concerning fraud detection and reporting. The scope and organization of these materials permits local Counsel to tailor the Standards of Conduct briefing to the particular audience.

3. Concur. We believe, however, that there should be a uniform DoD policy applicable to all similar situations.

IG-DOD POSITION

Any question concerning the efficacy of an absolute bar on the receipt of gratuities has been answered by the experiences of the Army Material Command whose program has operated effectively since August 1984. While we have no objection to extending the absolute bar on gratuities to all DoD personnel, as suggested by DLA, our primary focus and concern here is with the inherent dangers posed by gratuities to the procurement process.

We also acknowledge that there are rare instances, such as the medical emergency and transportation examples given by DLA, where reason would dictate that DoD personnel accept some "gratuity" from a DoD contractor. Those instances could easily be covered by allowing a limited number of exceptions, when approved by the individual's superiors in advance or when notification of the "gratuity" is made to the individual's superiors immediately following its receipt. Additionally, while the Navy expressed a concern for a draconian approach of an absolute bar, we certainly acknowledge that the "rule of reason" should be applied in taking corrective action in response to violations of the policy.

B. Standards of Conduct Counseling

Current regulations require DoD personnel to consult legal counsel or, if appropriate, a Standards of Conduct counselor, for guidance in any matter where the propriety of a proposed action or decision in terms of the regulation or law is doubtful. As has been demonstrated by recent cases, such consultations and advisements by counselors, when conducted on an informal and oral basis, can result in subsequent conflicts between the employee and the official as to what facts were presented and what opinions were given during the discussions.

Recommendation

Current Standards of Conduct regulations should be amended to encourage that all requests for advisory opinions on conflict of interest and post employment issues, and all opinions by ethics officials on such issues, be in writing. Such written reports for post employment situations are encouraged by Section 923 of the Defense Procurement Improvement Act of 1985 and are required in certain cases by Section 931 of the 1987 Defense Authorization Act (P.L. 99-661, 10 U.S.C. Section 2397b(e)). Written opinions should be encouraged to the greatest extent possible for both conflict of interest and post employment issues. Conflicts between the employee and the ethics official regarding what facts were presented and what opinions were given can only be avoided by requiring employees to disclose fully all relevant facts in writing, and by having the ethics official provide a written opinion.

Comments

ARMY

A requirement that all opinions by ethics officials on conflict of interest and post-employment issues be in writing would be unduly burdensome. Although we recognize that a greater proportion of these opinions than in the past probably should be in writing, oral opinions often are sufficient and appropriate. We fear that in many cases having a requirement for all requests for advisory opinions in these areas to be in writing will inhibit employees from seeking advice.

NAVY

Ethics advice should be sought and rendered in writing in situations involving conflicts of interest and post-employement issues and other cases where in the ethics counselors judgment it is necessary. To require the total volume of ethics counseling to be conducted in writing would swamp the program's resources.

AIR FORCE

Nonconcur. Flexibility is an essential element of the efficient use of staff and administrative resources. We believe the judgment of the Ethics Counselor must govern this area. Written opinions are presently issued in those situations as deemed appropriate.

DEFENSE LOGISTICS AGENCY

While we agree that there are situations when requests and responses must be in writing, we think that requiring written documentation in all cases may adversely affect the program. One of the basic philosophies of our program is to encourage our employees to discuss their Standards of Conduct questions with their legal advisor at an early stage.

IG-DOD POSITION

While we still believe that requests for opinions and the opinions of ethics officials concerning both post employment and conflict of interest situations should always be in writing, we understand the objections of the Services and the DLA. With these objections in mind, we believe that ethics officials should, as a minimum, be encouraged to issue written reports for both post employment and conflict of interest situations whenever possible and that such reports be required when the ethics official has reason to believe that the situation may be the subject of future concern within DoD. It should again be noted that 10 U.S.C. Section 2397b(e) requires written opinions in cases covered by that statute.

C. Actions Against Contractors Who Provide Gratuities

Improved training and Standards of Conduct regulations for DoD procurement personnel will enhance the integrity of DoD contracting operations. However, additional steps must be taken against DoD contractors who seek to obtain favorable treatment through the systematic violation of DoD Standards of Conduct regulations and contract provisions regarding gratuities.

While the provision of gratuities to DoD employees is a criminal violation of 18 U.S.C. 201, there have been few prosecutions of corporations for such conduct. Most gratuity cases, even those demonstrating a pattern of corporate misconduct, are declined by the Department of Justice (DOJ) in favor of administrative and contractual remedies.

The DoD has many administrative and contractual remedies which can be taken against contractors who violate the prohibitions regarding the provision of gratuities. Unfortunately, DoD procurement officials have rarely used such remedies, and most procurement officials are unaware of their availability.

Under 10 U.S.C. 2207 and its implementing regulations (FAR subpart 3.2), DoD has the authority to terminate for default any contract where a contractor has been found to have provided a gratuity to a Government official. Furthermore, DoD can assess a penalty against the contractor for an amount equal to three to ten times the value of the gratuity. Despite the availability of those contract remedies for over 20 years, there was no reported instance of DoD using the remedy until 1985 when the Navy created an Ad Hoc Gratuities Board to review gratuities given to Admiral Hyman Rickover by four major Navy contractors. In a number of other cases dealing with significant gratuities to senior DoD officials, no consideration was ever given by responsible officials to utilizing the contractual remedy.

Under 18 U.S.C. 218, Federal agencies have the authority to rescind any contract tainted by a conviction for bribery, gratuities or conflict of interest. Despite the fact that the statute has been in effect for over 25 years, it has never been used. At the request of DoD, the President issued Executive Order 12448 in November 1983, authorizing Federal agencies to use the statute. After lengthy delays, the

Executive Order was finally implemented in July 1986 as FAR subpart 3.7.

As a result of a lack of prosecutive attention by the DOJ, and a lack of adequate contract and administrative action by DoD, there is an appearance in the procurement community that DoD tolerates the improper provision of gratuities by contractors.

Recommendations

To address properly the problem of provision of gratuities by contractors, the following actions are recommended:

1. As recommended above, a policy absolutely barring the provision of all gratuities by DoD contractors to DoD employees should be established within all DoD procurement organizations. The policy should be communicated to all DoD contractors through notification letters and during the contracting process.

2. Each of the Military Departments and the Defense Logistics Agency should create a permanent gratuities board charged with implementing the provisions of 10 U.S.C. 2207. Regulations should be established which require that any incident involving the provision of a gratuity by a contractor will be reported to the board for appropriate action.

3. Every effort should be made to ensure that implementing regulations are issued for 18 U.S.C. 218 and that the statute is used in all appropriate cases.

4. The DoD should encourage the DOJ to institute criminal prosecutions against DoD contractors who engage in a significant pattern and practice of providing gratuities to DoD employees.

5. Each of the Military Departments and the Defense Logistics Agency should ensure that all contracting officials are aware of the administrative and contractual remedies for gratuities.

Comments

ARMY

1. (See Army comment #1 to A above) Not only has AMC notified contractors of this policy, but when a violation occurs, the contractor receives a warning letter from the command.

2. We support this recommendation and will explore means of implementing it.

3. We support his recommendation but note that its application would be limited since it applies only in the case of a final criminal conviction.

4. (No comment).

5. We support this recommendation and will explore means of implementing it.

NAVY

The establishment of a permanent gratuities board will be considered by the Navy in consultation with DoD.

AIR FORCE

Concur in principle.

We are presently in the process of staffing the implementation of a Gratuities Board.

By direction of the President (E.O. 12448, Nov 4, 1983), any effort to promulgate regulations implementing 18 U.S.C. Section 218 must be pursued jointly by DoD with GSA and NASA.

Air Force investigative agencies follow an active policy of presenting relevant cases to DOJ for criminal prosecution. However, the final decision on prosecution is solely within the province of DOJ.

DEFENSE LOGISTICS AGENCY:

1. See comment #1 (to Section A above). In addition, we agree that DoD should make every reasonable effort to inform contractors of the prohibitions concerning gratuities.

2. We agree with the objective of the recommendation that when faced with a gratuity violation, the remedies available to the Government under 10 U.S.C. Section 2207 should be considered. It seems to us that establishing a permanent "gratuities board" is not an essential ingredient in assuring that all available remedies are considered and appropriate ones pursued.

3. Concur.

4. (No comment).

5. Concur. The coordination of remedies approach to gratuities and the need to ensure that contracting personnel are aware of the available remedies is essential. We have prepared and distributed for the use of DLA field activities, a Remedies Handbook to facilitate achieving this objective. We have stressed the coordination of remedies as part of the DLA Fraud Program and our Fraud Counsel at each DLA Primary Level Field Activity is responsible for advising contracting personnel and assuring that all appropriate remedies are pursued.

D. Actions Against DoD Employees Who Receive Gratuities

In addition to taking adverse actions against contractors who provide gratuities, DoD must also take firm disciplinary action against DoD employees who accept gratuities. In many instances, DoD employees actually encourage the provision of gratuities, and in some cases such efforts amount to virtual extortion. In one recent case, an Air Force colonel serving as a Defense Contract Administrative Services Management Area Commander, and two senior staff members, insisted that contractors pay for meals, accommodations and other travel expenses. The three individuals succeeded in receiving over $40,000 in such reimbursements during the life of the scheme. Although the colonel was convicted in U.S. District Court, no adverse administrative action was taken against him and he was allowed to retire from the Air Force. The two civilian employees were also convicted and were dismissed by the Defense Logistics Agency.

When significant gratuity abuses are discovered involving Government employees, various adverse administrative actions may be taken. However, many appropriate actions are never considered. For example, actions are rarely taken to recover the value of the gratuity from the Government employee. While the Government clearly has a right to such reimbursement (Continental Management Incorporated v U.S. 527 F2d 613 (6th Cir. 1975)), procedures have not been developed to ensure that such reimbursement is obtained.

Since criminal prosecution is often not taken, prompt administrative disciplinary action is essential. Furthermore, any employee disciplinary action should be taken in a coordinated manner with the adverse contractual action taken against the contractor.

Recommendations

1. All procurement organizations within DoD should establish a clear policy regarding disciplinary actions for acceptance of gratuities. The results of disciplinary actions (without employee identification) regarding acceptance of

gratuities should receive wide dissemination throughout the organization.

2. An administrative procedure should be established to allow for the recoupment from DoD employees of the value of any gratuity accepted.

3. Disciplinary actions against employees should be taken in a manner which is coordinated with adverse contractual action against the contractor who provided the gratuity.

4. The DoD should encourage the DOJ to institute criminal prosecutions against any DoD employee who engages in a significant pattern and practice of accepting gratuities from DoD contractors.

Comments

ARMY

1. We support this recommendation. We also recognize the need to evaluate each case on its own merits, both in the interest of fairness and to avoid problems of improper command influence in cases under the UCMJ.

2. We support this recommendation and will explore means of implementing it.

3. We are in favor of appropriate disciplinary action against employees who accept gratuities, but we are not sure exactly how this would be "coordinated" with adverse contractual action against the contractor who provided the gratuity. Usually the same evidence would support both actions and they could be coordinated to that extent.

4. We support this recommendation, recognizing, however, that DOJ has its own priorities.

NAVY

Publicizing the fact that an individual employee was disciplined for violation of the Standards of Conduct must be handled with care. Under long-standing Federal civilian personnel policy a violation which does not lead to separation or change of status should not be publicized as the employee's right to privacy should be of paramount interest. This would not rule out the publication of statistics regarding discipline meted out for Standards of Conduct violations for its deterrent effect.

AIR FORCE

Concur in part. Disciplinary procedures under existing regulations provide supervisors clear guidance on imposing disciplinary action. Releasing the results of disciplinary actions would have to be consistent with the Privacy Act and implementing regulations. The necessity of timely disciplinary action will not always allow for coordination of action against offending employees and contractors.

DEFENSE LOGISTICS AGENCY

1. As noted in your findings, we do take appropriate disciplinary action against employees who accept gratuities. The Heads of our Primary Level Field Activities are advised of significant criminal actions. In addition, we routinely highlight the Fraud/Waste/Abuse/Standards of Conduct arena in our monthly news magazine, DLA Dimensions.

2. We agree with your recommendation.

3. As noted earlier, we agree with applying the coordination of remedies approach to gratuities.

4. Concur.

IG-DOD POSITION

The Inspector General recognizes the requirements imposed by the Privacy Act in regard to dissemination of disciplinary actions. Results of disciplinary actions in Standards of Conduct cases could be disseminated without improper invasions on any employee's right to privacy. Such dissemination could include a general statement of the facts involved in each case and action taken, thus providing other employees with real life guidance on expected standards of conduct and possible consequences of improper actions.

The recommendation concerning coordination of actions in connection with both the DoD employee and the contractor is not intended to be limited to the timing of adverse actions or the sharing of information to support individually planned adverse actions. In the past, gratuity or other conflict of interest cases, which resulted in adverse personnel action against a DoD employee, were frequently never considered by the procurement community for appropriate administrative or contractual action against the DoD contractor. The coordination of action recommended is intended to ensure that, as a minimum, the personnel and procurement communities share information and concerns so that appropriate corrective action is taken by each DoD element.

E. Honoraria

The DoD Standards of Conduct Directive contains a general prohibition on the acceptance of compensation from contractors who do business, or who are seeking to do business, with the Federal Government. Military Department implementing regulations do not, however, provide clear and uniform guidance in this area, particularly as it applies to honoraria from DoD contractors. There is, however, no explicit prohibition upon the acceptance of honoraria from contractors, nor is the consultation with an ethics counselor a mandatory requirement. Another section of the Army regulation specifically authorizes the acceptance of honoraria for amounts less than $2,000. The Navy guidance on this subject is similarly worded. Only AF Regulation 30-30, Attachment 7, contains a clear prohibition upon the acceptance of honoraria from DoD contractors.

Certain industries, such as drug companies, have engaged in an extensive program of providing honoraria to Government medical personnel to speak on subjects related to their products. A recent Veterans Administration (VA) Inspector General investigation disclosed that one drug company paid over $750,000 in honoraria to VA and DoD medical personnel. Many of these personnel were responsible for the procurement of company products for VA and DoD. Furthermore, a senior Army anesthesiologist was convicted for the improper receipt of honoraria from another large drug company.

The acceptance of honoraria from DoD contractors by DoD personnel clearly presents the appearance, if not the existence, of a conflict of interest.

Recommendation

The DoD guidance should clearly state that the payment of honoraria by DoD contractors to DoD personnel is absolutely prohibited. This guidance should receive wide distribution throughout the DoD medical community.

Comments

ARMY

A prohibition on the acceptance of honoraria from DoD contractors already has been incorporated into the revision of AR 600-50.

NAVY

The Navy Instruction on Standards of Conduct does not permit the acceptance of honoraria by its personnel from Defense contractors. The section referred to in the finding states only the prohibition of 2 U.S.C. Section 441 on the receipt of honoraria. The Instruction has to be read and interpreted as a whole. Since honoraria are gratuitous payments, they constitute proscribed gratuities under the Navy Instruction when offered by a Defense contractor. Consideration will be given to clarifying this position in the Navy Instruction.

AIR FORCE

Concur.

DEFENSE LOGISTICS AGENCY

Concur.

F. DoD Ethics Program

As currently constituted, there is no centralized control or oversight of the DoD ethics program. While the General Counsel of DoD promulgated the DoD Standards of Conduct Directive, the current Directive does not assign the General Counsel any role in overseeing its implementation by the Military Departments, nor does it provide the General Counsel with any specific responsibility regarding oversight of ethics officials within DoD.

Similarly, the implementing regulations of the Military Departments each require the creation of an ethics advisor at all major activities. While the General Counsel and the Judge Advocate General of each of the Military Departments are generally responsible for the ethics programs in their respective Services, there is no organizational oversight by those officials. No organization within DoD conducts regular reviews of the performance of the DoD ethics program. Neither the General Counsel, DoD, nor the General Counsels of the Military Departments conduct regular reviews of ethics matters which are presented to local ethics advisors for disposition.

As a result of this lack of central control or oversight of the DoD ethics program, there is no effective review of its operation. No statistics regarding Standards of Conduct cases are gathered and maintained by any of the Military Departments or DoD. Only the Defense Logistics Agency (DLA) maintains any degree of control over the disposition of Standards of Conduct cases arising in DLA. Information regarding Standards of Conduct cases are not transmitted to higher officials within the Military Departments or DoD. Ethics opinions are, for the most part, not memorialized and disseminated to other ethics officials. Ethics advisors in the field, who provide the majority of ethics counseling in DoD, execute their responsibilities without any meaningful guidance or oversight from senior DoD ethics officials. For the most part, the only written guidance which is available to local ethics officials is a copy of the DoD directive and the implementing regulations of the respective Military Departments.

Recommendation

The Office of General Counsel, DoD, should assume the responsibility for the development of a complete ethics program within DoD. Uniform advice and guidance on a broad range of ethics matters should be provided to all ethics advisors on a routine basis. A regular reporting system should be established that would cause Standards of Conduct disciplinary cases to be reported to the Office of General Counsel by the Military Departments and Defense Agencies on an annual basis. Furthermore, ethics opinions provided by local ethics advisors should be reviewed by senior Military Department and DoD ethics officers for completeness, accuracy and uniformity. Selected opinions should then be memorialized and disseminated throughout DoD to provide more detailed guidance on ethics affairs.

Comments

ARMY

We certainly support a broader role for the Office of General Counsel, DoD, in the ethics area. A centralized reporting system for Standards of Conduct disciplinary cases would be burdensome, but would facilitate the identification of problem areas. Senior level review of ethics opinions provided by local ethics advisors would be extremely burdensome and, in view of the wide dispersion of the Army and its approximately 300 ethics advisors, may well be impossible to administer.

NAVY

With respect to the operation of the Navy's ethics program, ethics counselors in the field regularly coordinate with and receive guidance from the Offices of the General Counsel and the Judge Advocate General; and the inspections of the Navy Inspector General include a review of activities' ethics programs. The aim of the Navy is to place qualified ethics counselors in the field who will assist their client commands in running an effective ethics program. The requirement of reports is not deemed necessary.

AIR FORCE

Concur in principle. This is an area that may merit particular General Counsel, DoD, consideration during this update and revision of DoD Directive 5500.7.

DEFENSE LOGISTICS AGENCY

Concur.

IG-DOD POSITION

It is only through a coordinated approach to the DoD ethics program that a uniform Standard of Conduct can be implemented and understood by DoD employees. This is particularly true when viewed in the context of the varied assignments obtained by a large number of active duty military personnel. While reporting requirements may not be viewed as necessary by some, it is only through a reporting mechanism that a coordinated and uniform approach can be maintained.

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